This handbook contains:

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The Land Registration Act, 2012
The National Land Commission Act, 2012
The Environment & Land Court Act, 2011
The Urban Areas & Cities Act, 2011
The Land Act, 2012
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SCHEDULE—REPEALED LAWS
THE LAND ACT, 2012

AN ACT of Parliament to give effect to Article 68 of the Constitution, to revise, consolidate and rationalize land laws; to provide for the sustainable administration and management of land and land based resources, and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY PROVISIONS

Short title.

1. This Act may be cited as the Land Act, 2012.

Interpretation.

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

-“actual notice” means the notice which a person has personally of a matter or action or document or the rights and interests of another person;

-“adjoining” in relation to parcels of public land, includes parcels of land separated by—

  (a) roads;

  (b) railways;

  (c) watercourses or other natural features of such a character as to be insufficient to prevent the passage of stock; or

  (d) reserves or unallocated public land;

-“alienation of land” means the sale or other disposal of the rights to land;
allocation of land" means the legal process of granting rights to land;

assignee" means a person to whom an assignment is made;

"building" means any structure or erection of any kind whatsoever whether permanent or temporary, whether movable or immovable and whether completed or uncompleted;

"Cabinet Secretary" means the Cabinet Secretary responsible for matters relating land;

certificate of lease” has the meaning assigned to it under the law relating to land registration;

certificate of title" has the meaning assigned to it under the law relating to land registration;

"charge" means an interest in land securing the payment of money or money’s worth or the fulfillment of any condition, and includes a subcharge and the instrument creating a charge, including –

(a) an informal charge, which is a written and witnessed undertaking, the clear intention of which is to charge the chargor’s land with the repayment of money or money’s worth obtained from the chargee; and

(b) a customary charge which is a type of informal charge whose undertaking has been observed by a group of people over an indefinite period of time and considered as legal and binding to such people;

"child" has the meaning assigned to it in Article 260 of the Constitution;
"Commission" means the National Land Commission established by Article 67 of the Constitution;

"community land" has the meaning assigned to it in Article 63 of the Constitution;

"compulsory acquisition" means the power of the State to deprive or acquire any title or other interest in land for a public purpose subject to prompt payment of compensation;

"corruption" has the meaning assigned to it under the Anti-Corruption and Economic Crimes Act, 2003; No. 3 of 2003.

"county executive committee member" means the county executive committee member responsible for matters relating to land;

"Court" means the Environment and Land Court established under the Environment and Land Court Act, 2011; No. 19 of 2011.

"co-tenancy" means the ownership of land by two or more persons in undivided shares and includes joint tenancy or tenancy in common;

"customary land rights" refer to rights conferred by or derived from Kenyan customary law whether formally recognized by legislation or not;

"dealing" includes disposition and transmission;

"deliver" includes to transmit by post, hand, email, fax or other prescribed medium;

"development" means the carrying out of any building operation, engineering operation, farming activities or mining operation in, on, under or over land or the making of any change of a substantial nature in the use of land;
"disposition" means any sale, charge, transfer, grant, partition, exchange, lease, assignment, surrender, or disclaimer and includes the disclaimer or the creation of an easement, a usufructuary right, or other servitude or any other interest in a land or a lease and any other act by the owner of land or under a lease where the owner’s rights over that land or lease are affected or an agreement to undertake any of the dispositions;

"dwelling house" means any house or part of a house or room used as a separate dwelling in any building and includes a garden or other premises within the curtilage of and used as a part of the dwelling house;

"easement" means a non-possessory interest in another’s land that allows the holder to use the land to a particular extent, to require the proprietor to undertake an act relating to the land, or to restrict the proprietor’s use to a particular extent, and shall not include a profit;

"freehold" means the unlimited right to use and dispose of land in perpetuity subject to the rights of others and the regulatory powers of the national government, county government and other relevant state organs;

"geo-reference" means reference to an object by a specific location either on, above or below the earth’s surface;

"geo-referenced boundaries" means reference to boundaries of a parcel of land to a specific or unique location on above or below the earth surface as defined in the Survey Act, Cap. 532.

"instrument" means a writing, including an enactment which creates or affects legal or equitable rights and liabilities and includes any covenant or condition expressed in an instrument or implied in a instrument under this Act or any other law relating to land and, except where otherwise provided includes, any variation of an instrument;

"interest" means a right in or over a land;
―joint tenancy‖ means a form of concurrent ownership of land where two or more persons each possess the land simultaneously and have undivided interest in the land under which upon the death of one owner it is transferred to the surviving owner or owners;

―land‖ has the meaning assigned to it in Article 260 of the Constitution;

―lease‖ means the grant, with or without consideration, by the proprietor of land of the right to the exclusive possession of his or her land, and includes the right so granted and the instrument granting it, and also includes a sublease but does not include an agreement for lease;

―lessee‖ means a person to whom a lease is granted and includes a person who has accepted a transfer or assignment of a lease;

―lessor‖ means a person by whom a lease is granted and includes a person who has accepted the transfer or assignment of the reversion of a lease;

―licence‖ means a permission given by the Commission in respect of public land or proprietor in respect of private or community land or a lease which allows the licensee to do some act in relation to the land or the land comprised in the lease which would otherwise be a trespass, but does not include an easement or a profit;

―management body‖ means a statutory body, public corporation or a public agency that is authorized by the Commission to manage reserved land under section 16;

―marriage‖ means a civil, customary or religious marriage;

―matrimonial home‖ means any property that is owned or leased by one or both spouses and occupied by the spouses as their family home;
"partition" means the separation by a formal legal instrument of the shares in land or lease held by owners in common so that each such owner takes shares free of the rights of the others;

-"private land" has the meaning assigned by Article 64 of the Constitution;

-"proprietor" means—

(a) in relation to land or a lease, the person named in the register as the proprietor; and

(b) in relation to a charge of land or a lease, the person named in the register of the land or lease as the person in whose favour the charge is made;

-"public land" has the meaning assigned by Article 62 of the Constitution and includes the coast foreshore, river, dams lakes and other reserves under the Survey Act or under any other law;

"public purposes" means the purposes of—

(a) transportation including roads, canals, highways, railways, bridges, wharves and airports;

(b) public buildings including schools, libraries, hospitals, factories, religious institutions and public housing;

(c) public utilities for water, sewage, electricity, gas, communication, irrigation and drainage, dams and reservoirs;

(d) public parks, playgrounds, gardens, sports facilities and cemeteries;

(e) security and defence installations;
(f) settlement of squatters, the poor and landless, and the internally displaced persons; and

(g) any other analogous public purpose;

"registry" has the meaning assigned to it under the law relating to land registration;

"register of public land" means a register for public land maintained under the law relating to land registration for the recording of rights and interests in and dispositions of public land;

"restrictive agreement" means an agreement by one owner of land restricting the building on, or the use, or other enjoyment of land for the benefit of the owner under a land or neighbouring land and includes a restrictive covenant;

"riparian reserve" means the land adjacent to the ocean, lake, sea, rivers, dams and water courses as provided under the Survey Act, Cap. 532 or any other written law;

"squatter" means a person who occupies land that legally belongs to another person without that persons consent;

"State" has the meaning assigned to it under Article 260 of the Constitution;

"State organ" has the meaning assigned to it under Article 260 of the Constitution;

"tenancy in common" means a form of concurrent ownership of land in which two or more persons possess the land simultaneously where each person holds an individual, undivided interest in the property and each party has the right to alienate, or transfer their interest;
"transfer" means the passing of land, a lease or a charge from one party to another by an act of the parties and not by operation of the law and includes the instrument by which such passing is effected;

"transferee" means a person who receives the land, lease or charge passed by an act of transfer;

"transferor" means the person who passes the land, lease or charge by an act of transfer;

"transmission" means the passing of land, a lease or a charge from one person to another by operation of law on death or insolvency or otherwise howsoever, and includes the compulsory acquisition of land under any written law;

"trustee" includes personal representative;

"valuable consideration" includes marriage, but does not include a nominal consideration; and

"valuer" means a valuer registered and licensed to practice as a valuer in accordance with the Valuers Act;

"unexhausted improvement" means anything or any quality permanently attached to the land directly resulting from the expenditure of capital or labour by an owner or any person acting on the owner’s behalf and increasing the productive capacity, the utility, the sustainability of its environmental quality and includes trees, standing crops and growing produce whether of an agricultural or horticultural nature.

Application

3. (1) This Act shall apply to all land declared as—

(a) public land under Article 62 of the Constitution;
(b) private land under Article 64 of the Constitution; and

(c) community land under Article 63 of the Constitution and any other written law relating to community land.

Guiding values and principles.

4. (1) The guiding values and principles of land management and administration in this section bind all State organs, State officers, public officers and all persons whenever any of them—

(a) enacts, applies or interprets any provisions of this Act; and

(b) makes or implements public policy decisions.

(2) In the discharge of their functions and exercise of their powers under this Act, the Commission and any State officer or public officer shall be guided by the following values and principles—

(a) equitable access to land; security of land rights;

(b) security of land rights;

(c) sustainable and productive management of land resources;

(d) transparent and cost effective administration of land;

(e) conservation and protection of ecologically sensitive areas;

(f) elimination of gender discrimination in law, customs and practices related to land and property in land;

(h) encouragement of communities to settle land disputes through recognized local community initiatives

(i) participation, accountability and democratic decision making within communities, the public and the Government;

(j) technical and financial sustainability;
(k) affording equal opportunities to members of all ethnic groups;

(l) non-discrimination and protection of the marginalized; and

(m) democracy, inclusiveness and participation of the people; and

(k) alternative dispute resolution mechanisms in land dispute handling and management.

Forms of Tenure.

5. (1) There shall be the following forms of land tenure-

(a) freehold;

(b) leasehold;

(c) such forms of partial interest as may be defined under this Act and other law, including but not limited to easements; and

(d) customary land rights, where consistent with the Constitution.

(2) There shall be equal recognition and enforcement of land rights arising under all tenure systems and non-discrimination in ownership of, and access to land under all tenure systems.

Land management and administration institutions.

6. The Cabinet Secretary shall, in relation to the management and administration of land—

(a) develop policies on land, upon the recommendation of the Commission;

(b) facilitate the implementation of land policy and reforms;
(c) coordinate the management of the National Spatial Data Infrastructure;

(d) coordinate the formulation of standards of service in the land sector;

(e) regulate service providers and professionals, including physical planners, surveyors, valuers, estate agents, and other land related professionals, to ensure quality control; and

(f) monitor and evaluate land sector performance.

Methods of acquisition of title to land.

7. Title to land may be acquired through—

(a) allocation;

(b) land adjudication process;

(c) compulsory acquisition;

(d) prescription;

(e) settlement programs;

(f) transmissions;

(g) transfers;

(h) long term leases exceeding twenty one years created out of private land; or

(i) any other manner prescribed in an Act of Parliament.

PART II—MANAGEMENT OF PUBLIC LAND

General Provisions
Management of public land.

8. In managing public land on behalf of the national and county governments, the Commission—

(a) shall identify public land, prepare and keep a database of all public land, which shall be geo-referenced and authenticated by the statutory body responsible for survey;

(b) shall evaluate all parcels of public land based on land capability classification, land resources mapping consideration, overall potential for use, and resource evaluation data for land use planning; and

(c) shall share data with the public and relevant institutions in order to discharge their respective functions and powers under this Act; or

(d) may require the land to be used for specified purposes and subject to such conditions, covenants, encumbrances or reservations as are specified in the relevant order or other instrument.

Conversion of land.

9. (1) Any land may be converted from one category to another in accordance with the provisions of this Act or any other written law.

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

(a) public land may be converted to private land by alienation;

(b) subject to public needs or in the interest of defence, public safety, public order, public morality, public health, or land use planning, public land may be converted to community land;

(c) private land may be converted to public land by—

(i) compulsory acquisition;
(ii) reversion of leasehold interest to Government after the expiry of a lease; and

(iii) transfers; or

(iv) surrender.

(d) Community land may be converted to either private or public land in accordance with the law relating to community land enacted pursuant to Article 63(5) of the Constitution.

(3) Any substantial transaction involving the conversion of public land to private land shall require approval by the National Assembly or county assembly as the case may be.

(4) The Commission shall cause a register to be kept containing the following particulars—

(a) public land converted to private land by alienation;

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

(c) community land converted to either private or public; and

(d) such other details as the Commission may direct.

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

(a) prescribing substantial transactions requiring approval of the National Assembly or the County Assembly as the case may be;
(b) prescribing anything required to be prescribed under this section;

(c) regulating and controlling the conversion of land from one category to another;

(d) prescribing the factors to be applied or taken into account in determining land that is to be converted.

(6) Rules made under this section may contain—

(a) different provisions for different parts of Kenya;

(b) different provisions for different categories of conversion or kinds of transactions; or

(c) exemptions or conditional exemptions from the operation of any rule made under this section.

(7) Any Rules made by the Commission under subsection (5) shall be tabled before Parliament for approval.

**Guidelines on the management of public land.**

10. (1) The Commission shall prescribe guidelines for the management of public land by all public agencies, statutory bodies and state corporations in actual occupation or use of public land.

(2) The guidelines prescribed under subsection (1) shall indicate management priorities and operational principles for the management of public land resources for identified uses.

(3) The Commission shall, in the development of the guidelines under subsection (1), comply with Article 10(2) of the Constitution.
Conservation of ecologically sensitive public land.

11. (1) The Commission shall take appropriate action to maintain public land that has endangered or endemic species of flora and fauna, critical habitats or protected areas.

(2) The Commission shall identify ecologically sensitive areas that are within public lands and demarcate or take any other justified action on those areas and act to prevent environmental degradation and climate change.

(3) Notwithstanding subsection (2) the Commission shall consult existing institutions dealing with conservation.

Allocation of public land.

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

(a) public auction to the highest bidder at prevailing market value subject to and not less than the reserved price;

(b) application confined to a targeted group of persons or groups in order to ameliorate their disadvantaged position;

(c) public notice of tenders as it may prescribe;

(d) public drawing of lots as may be prescribed;

(e) public request for proposals as may be prescribed; or

(f) public exchanges of equal value as may be prescribed.

(2) The Commission shall ensure that any public land that has been identified for allocation does not fall within any of the following categories—
(a) public land that is subject to erosion, floods, earth slips or water logging;

(b) public land that falls within forest and wild life reserves, mangroves, and wetlands or fall within the buffer zones of such reserves or within environmentally sensitive areas;

(c) public land that is along watersheds, river and stream catchments, public water reservoirs, lakes, beaches, fish landing areas riparian and the territorial sea as may be prescribed;

(d) public land that has been reserved for security, education, research and other strategic public uses as may be prescribed; and

(e) natural, cultural, and historical features of exceptional national value falling within public lands;

(f) reserved land; or

(g) any other land categorized as such, by the Commission, by an order published in the Gazette.

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

(4) In fulfilling the requirements of subsection (3), the Commission shall ensure that the investments in the land benefit local communities and their economies.

(5) Subject to the Constitution and any other law, the Commission may, in consultation with the National and county governments, allocate land to foreign governments on a reciprocal basis in accordance with the Vienna Convention on Diplomatic Relations.
(6) At the expiry, termination or extinction of a lease granted to a non-citizen, reversion of interests or rights in and over the land shall vest in the national or county government as the case may be.

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

(8) Public land allocated under this section shall not be sold, disposed off, sub-leased, or sub-divided unless it is developed for the purpose for which it was allocated.

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

(10) In an allocation of public land under this section, the Commission may impose any terms, covenants, stipulations and reservations that the Commission considers advisable, including—

(a) that the applicant shall personally occupy and reside on the land for a period set by the Commission;

(b) the applicant shall do such work and spend such money for permanent improvement of the public land within the period specified by the Commission; or

(c) the consideration that must be paid for a disposition of public land.

(11) The Commission shall make regulations prescribing the criteria for allocation and for connected matters.

(12) The Commission shall make regulations prescribing the criteria for allocation of public land and without prejudice to the generality of the foregoing, such regulations may prescribe—
(a) forms of ownership and access to land under all tenure systems;

(b) the procedure and manner of setting aside land for investments;

(c) procedures to be followed with respect to auction and disposition of land;

(d) appropriate mechanisms for repossession of land given to citizens at the expiry of a lease; and

(e) mechanisms of benefit sharing with local communities whose land have been set aside for investment.

Lessee pre-emptive rights to allocation.

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

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

(a) prescribing the procedures for applying for extension of leases before their expiry.

(b) prescribing the factors to be considered by the Commission in determining whether to extend the tenure of the lease or re-allocate the land to the lessee.
(c) the stand premium and or the annual rent to be paid by the lessee in consideration of extension of the lease or re-allocation of the land.

(d) other covenants and conditions to be observed by the lessee.

Notification requirements applicable to allocation of public land.

14. (1) The Commission shall, before allocating any public land under this Act, issue, publish or send a notice of action, to the public and interested parties, at least thirty days before, offering for allocation, a tract or tracts of public land.

(2) The notice under subsection (1) shall include the terms, covenants, conditions and reservations which are to be included in the conveyance document and the method of allocation.

(3) The notice under subsection (1) shall provide a period of fifteen days from the date of its issuance, within which the public and interested parties may comment.

(4) At least thirty days prior to the allocation of public land, the Commission shall send a notice to the governor in whose county the public land proposed for allocation is located and to the head of the governing body of any administrative subdivision having development control or other land use regulatory responsibility in the geographic area within which the public lands are located and to the head of any administrative subdivision having administrative or public services responsibility in the geographic area within which the lands are located.

(5) The notice under subsection (4) shall be sent to other known interested parties including, but not limited to, adjoining landowners, persons in actual occupation of the land including-

(a) marginalised communities and groups living in the general vicinity of the public lands being proposed for allocation, and
(b) boards of cities and municipalities and town administrators, created under sections 12, 13 and 31 of the Urban Areas and Cities Act, 2011, No. 13 of 2011 in the geographic vicinity within which the public lands proposed for allocation are located.

(6) The notice under subsection (4) shall be published in the Gazette and at least once a week for a period of three weeks and thereafter shall be published in a newspaper of general circulation in the general vicinity of the public land being proposed to be offered for allocation.

(7) A notice under this section above shall specify the place, date, and time of allocation, the appraised value of the land, describe with particularity each parcel of land to be allocated, and specify that the terms of allocation shall be available in the Commission’s offices in Nairobi and the Commission office nearest the land being proposed for allocation.

(8) Failure to provide notice of proposed allocations as required under this section shall serve as grounds for the Commission to-

(i) require that the notification procedures outlined in this subsection be repeated; or

(ii) void the allocation on grounds that the notification requirements of this Act were not properly conducted.

Reserved Public Land

Commission may reserve public land.

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

(a) the surface of the earth and the subsurface rock;
(b) any body of water on or under the surface;

(c) marine waters in the territorial sea and exclusive economic zone;

(d) natural resources completely contained on or under the surface; and

(e) the air space above the surface.

for one or more purposes in the public interest.

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

(3) Upon coming into force of this Act, the Commission shall undertake an inventory of all land based natural resources.

Placing of care, control and management of reserved public land.

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

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

(b) subject that care, control and management to such conditions as the Commission specifies.

(2) The Commission may by order in the Gazette, vary any condition to which the care, control and management of reserved land is subject.
(3) Prior to the variation under subsection (2) and where the variation affects a third party the Commission shall notify the third party of such variation.

(4) An order made under this section shall not create any interest in reserved public land in favour of the management body of that reserve.

(5) Where public land reserved under this Act for the purpose of recreation is leased or subleased under a power conferred under subsection (3), the lessee or sub-lessee shall not restrict public access to the area leased unless the terms of the management order or the lease or sublease provide otherwise.

(6) A management body with whom the care, control and management of a reserved land is placed by an order under subsection (1) shall have the capacity, to hold and deal with the reserved land in a manner consistent with—

(a) the order; and

(b) any laws or regulations governing the management body or the specific land that has been placed in reserve.

(7) Notwithstanding subsection (6), a management body shall not perform a function or exercise a power if another enactment expressly prevents the body from performing that function or exercising that power, or expressly authorises another person to perform that function or exercise that power.

Placing of care, control and management of reserved public land.

17. (1) A management body shall, on its own motion or at the request of the Commission, submit to the Commission for approval a plan for the development, management and use of the reserved public land vested in the management body.
(2) Before submitting a plan to the Commission under subsection (1) a management body shall—

(a) consider any conservation, environmental or heritage issues relevant to the development, management or use of the public land in its managed reserve for the purpose of that managed reserve; and

(b) incorporate in the plan a statement that it has considered those issues in drawing up the plan;

(c) submit an environmental impact assessment plan pursuant to existing law on environment; and

(d) comply with the values and principles of the Constitution.

(3) If a management body submits a plan to the Commission under subsection (1) and the Commission approves that plan and notifies the management body of that fact, the management body may develop, manage and use the public land concerned in accordance with the plan as approved or subsequently varied as the case may be.

(4) Notwithstanding the provisions of this section, the Commission shall, in considering an application under this section, comply with the relevant law relating to development control.

Revocation of management orders.

18. (1) If a management body does not comply with guidelines or directions issued by the Commission in writing, or does not submit a development plan in compliance with a request made under section 17 (2), the Commission, by order in the Gazette, may revoke that management order.

(2) If the Commission considers that it is in the public interest to revoke a management order, the Commission may, by order in the Gazette, revoke the management order.
(3) The preparation and implementation of development plans under this Act shall be in accordance with the physical planning regulations and any other relevant law.

Conservation of land based natural resources.

19. (1) The Commission shall make rules and regulations for the sustainable conservation of land based natural resources.

(2) Without limiting what the Commission may prescribe under subsection (1), the rules and regulations may contain—

(a) measures to protect critical ecosystems and habitats;

(b) incentives for communities and individuals to invest in income generating natural resource conservation programmes;

(c) measures to facilitate the access, use and co-management of forests, water and other resources by communities who have customary rights to these resources;

(d) procedures for the registration of natural resources in an appropriate register;

(e) procedures on the involvement of stakeholders in the management and utilization of land-based natural resources; and

(f) measures to ensure benefit sharing to the affected communities.

PART III— ADMINISTRATION OF PUBLIC LAND

Leases, Licences and Agreements for Public Land
Licence for temporary purposes.

20. (1) The Commission may grant a person a licence to use unalienated public land for a period not exceeding five years subject to planning principles as it may prescribe.

(2) The Commission may serve a notice to quit upon the licensee at any time after the expiration of nine months from the date of the licence.

(3) The fee payable under a licence under this section, the period and the agreements and conditions of the licence, shall be prescribed by the Commission.

(4) The licensee may, with the consent of the Commission, transfer the benefit of a licence under this section, and the transfer and the consent thereto shall be endorsed on the licence.

Removal of building under temporary Licence.

21. At any time before the licence expires, the occupant of any public land under a licence granted under section 20 may remove any structure or other building erected by the occupant.

Penalty for unpaid fees, etc.

22. The Commission may declare a licence granted under section 20 to be forfeited if—

(a) the fees payable under the licence is unpaid for one month after it became due;

(b) any tax or taxes imposed upon the land, or upon a structure or building erected on the land, or upon the licencee, remains unpaid for two months after becoming due; or

(c) if the occupant of the land fails to abide with the conditions of the licence.
Implied covenants and conditions by grantor or lessor.

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

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

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

(2) A grant of public land shall be made in the name of the Commission on behalf of the national or county government as the case may be, and shall be sealed.

Implied covenant and conditions by lessee or licensee.

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

(a) pay rent and royalties thereby reserved at the time and in the manner therein provided; and

(b) pay all taxes, rates, charges, duties, assessments or outgoings of whatever description that may be imposed, charged or assessed upon the land or the buildings thereon, or upon the lessor or grantor or lessee or licencee in respect thereof.
Buildings on leased public lands.

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

(a) in the case of a lease for a term exceeding thirty years, shall pass to the national or county governments without payment of compensation, on the determination of the lease or license; or

(b) in the case of a lease for a term not exceeding thirty years, may be removed by the lessee within three months of the termination, otherwise than by forfeiture, of the lease unless the Commission elects to purchase those buildings.

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

Covenants and conditions binding on persons claiming under grant, lease or licence.

26. Every covenant or condition, whether expressed or implied, in a grant, lease or licence under this Act which is binding on a grantee, lessee or licensee shall, unless otherwise expressly provided in the grant, lease or licence, be binding upon all persons claiming an interest in the land that is the subject of the grant, lease or licence, and whose title is derived through or under the grantee, lessee or licensee.

Obligations of children.

27. A child shall be capable of holding title to land through a trustee and such child shall be in the same position as an adult with regard to the child’s liability and obligations to the land.
Rents and other payments.

28. (1) The rent, royalties and payments reserved under any lease or licence shall be a debt owed to the Commission, and shall be paid by the lessee or licensee at the office of the Commission or at such other place as the Commission may prescribe.

(2) The annual rent reserved under any lease or licence shall be payable in advance on the first day of January in each year of the term.

(3) The payments made under subsection (2) shall be accounted for to the respective governments.

Unpaid rents and other payments.

29. (1) If any funds due in respect of any rent, principal installment, royalty or other payment (in this section referred to as "the principal debt") under any agreement lease or license under this Act, or under any Act repealed by this Act, remain unpaid after the due date, a late payment interest at the rate of two percent per month or part thereof, or at such other rate as may from time to time be specified by the Commission in the Gazette, shall be charged on the amount remaining unpaid for more than one month after the due date until the full amount is recovered.

(2) Any payment made under subsection (1) shall first be attributed to the payment of outstanding interest and thereafter only when such interest has been paid in full shall any payment be attributed to the reduction of the principal debt.

(3) If any interest becomes payable under subsection (1) the Commission shall serve on the debtor a notice demanding payment of that interest in addition to the other money then due.

(4) Notwithstanding the foregoing provisions of this section, the Commission may waive the whole or part of any late payment of
interest provided for by this section, if the debtor has provided the Commission a good and sufficient reason for the late payment.

(5) The Commission shall publish and publicize annually, any remission or waiver made under subsection (4).

(6) Notwithstanding the provisions of this section, the law relating to public financial management shall apply.

Commission may sue for rent, etc., in arrears

30. Without prejudice to the Commission’s right to recover a debt in any other way, the Commission 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.

Forfeiture of lease if rent unpaid or for breach of covenant.

31. (1) If any part of the rent or royalties reserved in a lease under this Act is unpaid for a period of twelve months after becoming due, or if the lessee breaches any express or implied covenant, the Commission may—

(a) serve a notice upon the lessee, specifying the rent or royalties in arrears or the covenant of which a breach has been committed; and

(b) commence an action in Court for the recovery of the land at any time at least one month after serving the notice contemplated in paragraph (a).

(2) In an action commenced under subsection (1) (b) on proof of the facts, the Court shall declare the lease forfeited, subject to relief upon such terms as may appear just.

(3) If the Court has declared a lease to be forfeited under subsection (2), the Commission may re-enter upon the land.
(4) In exercising the power of granting relief against forfeiture under this sub-section (1) the Court shall be guided by the principles of the doctrines of equity.

**Forfeiture of licence.**

32. (1) Subject to any other provision of this Act, where the rent or any part thereof payable under a license issued under this Act is at any time unpaid for a period of thirty days after the same has become due, or if the licensee fails to comply with, or commits any breach of, the conditions, whether express or implied, of the license, the Commission may make an application in Court to declare the license forfeited.

(2) Upon receipt of an application under subsection (1), together with a statement specifying the rent in arrears or the condition which has not been complied with or of which a breach has been committed, the Court shall cause to be served upon the licensee, a copy of the statement together with a notice of the date, not being less than fourteen days from the date of the notice, when the application will be heard.

(3) If upon the date fixed for the hearing of the application or to which the hearing is adjourned it is proved to the satisfaction of the court that rent is in arrears or that the licensee has failed to comply with or has committed a breach of any of the conditions of the license, the Court shall, subject to such relief against forfeiture for non-payment of rent as may seem just, declare the license forfeited.

**Debt owed to Commission not extinguished by forfeiture.**

33. A forfeiture shall not extinguish any debt owed to the Commission in respect of any rent, royalty or other payment to be made by a lessee or licensee under a lease or license forfeited.
Subdivision etc., of public land subject to continuing interests, etc.

34. (1) If the Commission proposes to resurvey the boundaries of any leased public land, or to subdivide land that is the subject of any interests or cautions, the Commission 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 Commission 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.

(2) The Commission shall notify all interest holders and relevant caveators of the boundaries adjustments made under subsection (1).

(3) On the adoption by the Commission of a survey plan or revised survey plan referred to in subsection (1) and the registration of the order with reference to that survey plan or revised survey plan, the boundaries of the relevant public land are adjusted accordingly—

(a) despite the existence of any interests registered or cautions lodged in respect of that public land; and

(b) with or without the consent of the holders of those interests or of the relevant cautioners.

(4) The Commission shall ensure that an adjustment made under subsection (3) is made in conformity with sound planning and land management principles so as to cause as little detriment as possible to any interest or caveat affected by that adjustment.
(5) On the adjustment under subsection (3) of the internal or external boundaries of leased public land subject to interests or caveats, the interests or caveats apply to the relevant locations or lots within those boundaries and not to the public land referred to in the instruments which created those interests or caveats.

Acceptance of purchase money or rent not to operate as waiver of forfeiture.

35. The acceptance by or on behalf of the Commission of any purchase money or any rent or other payment under any lease or licence shall not be held to operate as a waiver by the Commission of any forfeiture accruing by reason of the breach of any covenant or condition annexed to any sale, lease or license of or respecting public land, whether the sale, lease or licence is under this Act or under any other Act relating to the disposal of public land.

Notice of lease, license or agreement action on public land.

36. (1) A notice of action indicating the availability of public land for use through lease, licence, or agreement shall be published in the Gazette and in at least two daily newspapers of nationwide circulation when a determination has been made that such public land is available for a particular use.

(2) The notice under subsection (1) shall indicate the use proposed for the public land and shall notify the public that applications for a lease, licence or agreement shall be considered, and specify the form of negotiation, whether by competitive or non-competitive bidding, under which the land use authorization shall be issued.

PART IV—COMMUNITY LAND

Community land.

37. Community land shall be managed in accordance with the law relating to community land enacted pursuant to Article 63 of the Constitution.
PART V—ADMINISTRATION AND MANAGEMENT OF PRIVATE LAND

Contracts Over Land

Regaining possession of land after concluding contract of sale of land.

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

(a) the contract upon which the suit is founded—

(i) is in writing;

(ii) is signed by all the parties thereto; and

(b) the signature of each party signing has been attested to by a witness who was present when the contract was signed by such party.

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

39. If, under a contract for the sale of land, the purchaser has entered into possession of the land, the vendor may exercise his or her contractual right to rescind the contract by reason of a breach of the contract by the purchaser by—

(a) resuming possession of the land peaceably; or

(b) obtaining an order for possession of the land from the court in accordance with the provisions of section 41.

40. (1) Nothing in section 39 prevents a vendor from claiming damages and mesne profits from the purchaser for the breach of a contract for a sale, or for breach of any other duty to the vendor which the purchaser may be under independently of the contract, or affects the amount of damages that the vendor may claim.
(2) Any term express or implied in a contract or other instrument that conflicts with this section shall be inoperative.

Procedure for obtaining order for possession.

41. (1) A vendor who proposes to seek to regain possession of private land under section 39, shall serve a notice on the purchaser which shall inform the purchaser—

(a) of the nature and extent of the breach complained of by the vendor;
(b) whether the vendor considers that the breach is capable of being remedied by the payment of a stated amount of money owing under the contract;
(c) whether the vendor considers that the breach is capable of being remedied by the purchaser doing or desisting from doing anything or paying reasonable compensation or both, and of the thing that the purchaser must do or desist from doing or the amount of compensation that shall be paid or both to remedy the breach and the time, being not less than thirty days, within which the actions referred to in this paragraph must be completed;
(d) of the period within which the purchaser must remedy the breach, if the vendor considers that the breach is capable of being remedied; and
(e) of the consequence where the purchaser fails to remedy the breach or if the vendor does not consider that the breach can be remedied, the vendor may seek an order from the court to possess the land and rescind the contract.

(2) The fact that the notice served under subsection (1) does not comply in every particular with the provisions of subsection (1) shall not—
(a) render it invalid so long as the purport of the notice is clear; or

(b) absolve the purchaser from the consequences of not responding to the notice.

Relief against rescission of contract for the sale of land.

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

(a) in the proceedings for an order for possession; or

(b) in a proceedings brought by the purchaser.

(2) If the vendor has peaceably entered on to the land the purchaser shall apply for relief within ninety days after the entry on to the land.

(3) The court may grant relief on such terms as it considers appropriate, including relief for breach of any term or condition of the contract that is not capable of being remedied.

(4) An application for relief under this section shall not in itself to be taken as an admission by the purchaser that—

(a) there has been a breach of the contract by the purchaser;

(b) by reason of the breach, the vendor has the right to rescind the contract;

(b) a notice has been duly and properly served on the purchaser; or
(c) the time for remedying a breach or for paying an amount by way of compensation has expired, and the court may grant relief without determining any of those matters.

(5) Any, express or implied, term in a contract or other instrument to which this section applies that conflicts with or purports to set aside or negate this section shall be inoperative.

Transfers

43. (1) In this Part, “transfer” includes a conveyance, an assignment, a transfer of land, a transfer of lease or other instrument used in the disposition of an interest in land by way of transfer.

(2) A proprietor may transfer land, a lease or a charge to any person (including himself or herself), with or without consideration, by an instrument in the prescribed form.

(3) The transfer shall be completed by the registration of the transferee as proprietor of the land, lease or charge.

(4) The transferee of a charge may require the chargor to execute the transfer for the purpose of acknowledging the amount due under the charge at the date of execution of the transfer.

Transfer to take effect immediately.

44. A transfer shall not be expressed to take effect on the happening of any event or on the fulfillment of any condition or at any future time.

Transfer of leases.

45. On the transfer of a lease, unless the contrary is expressed in the transfer, there shall be implied—

(a) a warranty on the part of the transferor that the rent, agreements and conditions on the part of the lessee to be paid, performed and observed have been so paid, performed
and observed up to the date specified in the transfer or, if no such date is specified, the date of the transfer; and

(b) an agreement on the part of the transferee to pay the said rent as from the day following the date specified in the transfer or the date of the transfer, as the case may be, and to perform and observe the said agreements and conditions.

Effect of transfer on agreement in leases.

46. (1) A transfer from a lessor or from a lessee shall possess all the rights, and be subject to all the liabilities, of the lessor or lessee, as the case may be, expressed or implied in the lease, or arising or which have arisen thereunder, and the transferee shall cease to be under any obligation or possessed of any rights in respect of the lease subject to subsection (2).

(2) Nothing in this section shall affect the rights or liabilities of the lessor or lessee, as the case may be, in respect of a breach of any of the agreements expressed or implied in a lease that occurred before the transfer.

Transfer subject to charge.

47. In every transfer of land or a lease subject to a charge, there shall be an implied agreement by the transferee with the transferor to pay the interest, where applicable, secured by the charge.

48. A transfer of land that is subject to a lease shall be valid without the lessee acknowledging the transferee as lessor, but nothing in this section—

Transfer subject to lease.

(a) affects the validity of any payment of rent made by the lessee to the transferor; or
(b) renders the lessee liable, for failure to pay rent to the transferee, for any breach of agreement to pay rent, before notice of the transfer is given to the lessee by the transferee.

Transmissions

Transmission on death of joint proprietor.

49. If one of two or more joint proprietors of any land, lease or charge dies, the Registrar shall, on proof of the death, delete the name of the deceased from the register by registration of the death certificate.

Transmission on death of a sole proprietor or proprietor in common.

50. (1) If a sole proprietor or a proprietor in common dies, the proprietor’s personal representative shall, on application to the Registrar in the prescribed form and on production to the Registrar of the grant, be entitled to be registered by transmission as proprietor in the place of the deceased with the addition after the representative’s name of the words “as executor of the will of (..........................) [deceased]” or “as administrator of the estate of (..........................) [deceased]”, as the case may be.

(2) Upon production of a grant, the Registrar may, without requiring the personal representative to be registered, register by transmission—

(a) any transfer by the personal representative; and

(b) any surrender of a lease or discharge of a charge by the personal representative.

(3) In this section, “grant” means the grant of probate of the will, the grant of letters of administration of the estate or the grant of summary administration of the estate in favour of or issued by the Public Trustee, as the case may be, of the deceased proprietor.
Effect of transmission on death.

51. (1) Subject to any restriction on a person’s power of disposing of any land, lease or charge contained in an appointment, the personal representative or the person beneficially entitled on the death of the deceased proprietor, as the case may be, shall hold the land, lease or charge subject to any liabilities, rights or interests that are unregistered but are nevertheless enforceable and subject to which the deceased proprietor held the same, but for the purpose of any dealing the person shall be deemed to have been registered as proprietor thereof with all the rights conferred by this Act on a proprietor who has acquired land, a lease or a charge, as the case may be, for valuable consideration.

(2) The registration of any person as aforesaid shall relate back to and take effect from the date of the death of the proprietor.

Transmission on bankruptcy

52. (1) Upon production to the Registrar of a certified copy of the order of court adjudging a proprietor bankrupt, or directing that the estate of a deceased proprietor shall be administered according to the law of bankruptcy—

(a) a copy of the order shall be filed with the registrar; and

(b) the trustee in bankruptcy shall be registered as proprietor of any land, lease or charge of which the bankrupt or the deceased proprietor is proprietor, in place of the bankrupt or deceased proprietor.

(2) A trustee in bankruptcy shall be described in the register as ‘trustee of the property of (............................), a bankrupt’.

Transmission upon company’s liquidation.

53. (1) If a company is being wound up, the liquidator shall—

(a) produce to the Registrar a resolution or order appointing the liquidator; and
(b) satisfy the Registrar that the person has complied with the Companies Act, Cap. 486,

and the Registrar shall enter the appointment in respect of any land, lease or charge of which the company is registered as proprietor, and file the copy of the resolution or order.

(2) An instrument executed by or on behalf of a company in liquidation delivered for registration after the appointment of the liquidator has been entered under subsection (1) shall be sealed with the common seal of the company and attested to by the liquidator or, in the case of a company not required by law to have a common seal, shall be signed by the liquidator whose signature shall be verified in accordance with the relevant law.

(3) Where a vesting order has been made under section 240 of the Companies Act, the liquidator shall present the order and the Registrar shall register the liquidator as proprietor of any land, lease or charge to which the order relates.

**Transmission in other cases.**

54. If a person has become entitled to any land, lease or charge under any law or by virtue of any order or certificate of sale made or issued under any law, the Registrar, on the application of any interested person supported by such evidence as the person may require, shall register the person entitled, as the proprietor.

**PART VI—GENERAL PROVISIONS ON LEASES**

**Application of this Part.**

55. (1) Unless otherwise provided in a lease instrument, the provisions of this Part shall apply to all leases, other than leases governed by legislation relating to community land.

(2) The parties to a lease made or coming into effect before the commencement of this Act may agree, in writing, to adopt or incorporate any of the provisions of this Part into that lease and any
provisions adopted or incorporated shall, unless the agreement otherwise provides, become a part of the lease and shall be enforceable in every respect, with effect from the date of the agreement.

(3) In this Part, unless the context expressly or by implication renders it unfeasible, references to a lease include a sub-lease.

**Power to lease land.**

56. Subject to the provisions of this Act, the owner of private land may—

(a) ease that land or part of it to any person for a definite period or for the life of the lessor or of the lessee or for a period which though indefinite, may be terminated by the lessor or the lessee; and

(b) subject the lease to any conditions that may be required by this Act or any other law or that the lessor may impose.

**Periodic leases.**

57.(1) If in any lease—

(a) the term of the lease is not specified and no provision is made for the giving of notice to terminate the tenancy, the lease shall be deemed to be a periodic lease;

(b) the term is from week to week, month to month, year to year or any other periodic basis to which the rent is payable in relation to agricultural land the periodic lease shall be for six months;

(c) the lessee remains in possession of land with the consent of the lessor after the term of the lease has expired, then—

(i) unless the lessor and lessee have agreed, expressly or by implication, that the continuing possession shall be for
some other period, the lease shall be deemed to be a periodic one; and

(ii) all the terms and conditions of the lease that are consistent with the provisions of sub-paragraph (i) shall continue in force until the lease is terminated in accordance with this section.

(2) If the owner of land permits the exclusive occupation of the land or any part of it by any person at a rent but without any agreement in writing, that occupation shall be deemed to constitute a periodic tenancy.

(3) The periodic tenancy contemplated in subsection (1) (a) shall be the period by reference to which the rent is payable.

(4) A periodic tenancy may be terminated by either party giving notice to the other, the length of which shall be not less than the period of the tenancy and shall expire on one of the days on which rent is payable.

**Short-term leases.**

58. (1) A short term lease is a lease—

(a) made for a term of two years or less without an option for renewal;

(b) that is a periodic lease; and (c) to which section 57(2) applies.

(2) A short term lease may be made orally or in writing.

(3) A short term lease is not a registrable interest in land.

**Lease terminating on the occurrence of a future event.**

59. A lease that comes into operation after the date on which this Act comes into operation and that provides for its termination or
permits notice of its termination to be given on the occurrence of a future event shall not be invalid provided that the event is sufficiently defined in the lease so as to be identified when it occurs.

Lessee remaining in possession after termination of lease without the consent of lessor.

60. (1) If a lessee remains in possession of land without the consent of the lessor after the lease has been terminated or the term of the lease has expired, all the obligations of the lessee under the lease continue in force until such time as the lessee ceases to be in possession of the land.

(2) A lessor who accepts rent in respect of any period after the lease has been terminated or the term of the lease has expired, shall not, by reason of that fact, be deemed to have consented to the lessee remaining in possession of the land, or as having given up on any of the rights or remedies of the lessor against the lessee for breach of a covenant or condition of the lease, and if the lessor continues to accept rent from a tenant who remains in possession for two months, after the termination of the lease, a periodic lease from month to month shall be deemed to have come into force.

Future leases.

61. (1) For the avoidance of doubt, a lease of land may be made for a term to begin on a future date, not being later than twenty-one years after the date on which the lease is executed.

(2) A future lease, which is expressed to be for a period of more than five years, shall be of no effect unless and until it is, registered.

Notice by co-owners.

62. If a lease is entered into by—

(a) two or more lessors as co-owners; or

(b) two or more lessees as co-owners,
and the lease is terminable by notice, the notice shall be given by and to all the co-owners, unless all the parties to the lease have, expressly or by implication, agreed otherwise.

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

63. (1) This section shall apply to a sublease that comes into operation after the date of the commencement of this Act under which, a lessee enters or purports to enter into a sublease for a term that is to expire at the same time as or not later than, the expiry of the term of the head lease.

(2) A sublease to which this section applies shall not operate as an assignment of the head lease to the sub lessee, unless a contrary intention appears from the sublease or from the circumstances surrounding the granting of the sublease.

(3) If the term of the sublease to which this section applies is to expire after the expiry of the term of the head- lease,—

(a) the term of the sublease shall be reduced, to expire one day earlier than the term of the head lease, but without prejudice to any remedies that the sublessee may have in respect of that reduction; or

(b) if the term of the head lease is extended or renewed beyond the term for which the sublease was created, the sublease shall expire at the end of that original term,

whichever time is the earlier.

**Surrender to enable a new head lease to be entered into not to affect the sublease.**

64. (1) The surrender of a lease for the purpose of enabling a new lease to the same lessee to be entered into shall not require the
surrender of any sublease in respect of the surrendered lease, if, on or before the date on which the term of the new head lease is to expire,—

(a) the term of the sublease is to expire; or

(b) in the case of a sublease that is a periodic tenancy, the sublease may be terminated by the giving of the specified period of notice of termination and the expiry of that period.

(2) A sublease preserved under subsection (1)—

(a) shall continue in force as though it had been entered into in respect of the new head lease; and

(b) all rights and obligations under the sublease, including those which relate to any period before the surrender of the head lease, shall continue to be enforceable, except to the extent that any such obligation is, by reason of the fact that a new head lease has been entered into, more onerous than it would have been had the original head lease not been surrendered.

(3) A sublease entered into in respect of a surrendered lease includes, for purposes of this section, any sublease entered into by a person deriving title through the lessee under the surrendered lease.

**Covenants implied in a lease on part of the lessor.**

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

(a) that so long as the lessee pays the rent and observes and performs the covenants and conditions contained or implied in the lease to be observed and performed on the lessee's part, the lessee shall peaceably and quietly possess and enjoy the land leased during the term of the lease without any interruption from or by the lessor or any person rightfully claiming through the lessor;
(b) not to use or permit any adjoining or neighbouring land that the lessor owns or leases that would in any way render the leased land or any buildings on the leased land unfit or materially less fit for any purpose for which they may be used, consistent with the terms and conditions of the lease,

(c) if only part of a building is leased, to keep the roof, all external and main walls and main drains, and the common parts and common installations and facilities, including common passages and walkways in a proper state of repair;

(d) if any dwelling house, flat, or room is leased, that the house, flat or room is fit for human habitation at the commencement of the lease and shall be kept fit for human habitation during the lease;

(e) that if, the leased premises or any part of them are destroyed or damaged at any time—

(i) by fire, flood or explosion or other accident not attributable to the negligence of the lessee, or lessee's invitees or employees;

(ii) by civil commotion; or

(iii) by lightning, storm, earthquake, volcanic activity or other natural disaster,

so as to make the leased premises or any part of it wholly or partially unfit for occupation or use, the rent and any contribution payable by the lessee to the outgoings on the premises or a just proportion of that rent of contribution according to the nature and extend of the damage sustained shall be suspended and cease to be payable until the leased premises have been, once more, rendered fit for occupation and use; and if the leased premises have not been rendered fit for occupation and use within six months after their destruction or damage, the lessee shall have the option to terminate the lease after giving one month's notice;
(f) if it is an express or implied term of the lease that the leased land or a building on it may be used for any one specific purpose or purposes, the lessee may terminate the lease, on giving one month's notice to the lessor, if the land or building cannot be, or can no longer lawfully be, used for any of those purposes; and

(g) to pay all rates, taxes, dues and other outgoings that are payable in respect of the leased land except to the extent otherwise specified in the lease.

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

(a) either personally or by agents, enter, the leased land or buildings at any reasonable time for the purpose of inspecting the condition and repair of the premises, or for carrying out repairs and making good any defects that it is the lessor's obligation so to do; but in the exercise of that power, the lessor shall not unreasonably interfere with the occupation and use of the land and buildings by the lessee;

(b) terminate the lease by serving a notice of intention to terminate the lease on the lessee where—

(i) any rent is unpaid for one month after the due date for payment, whether or not a demand, in writing, for payment has been made by the lessor or an agent of the lessor;

(ii) the lessee has failed for a period of one month, to observe or perform any condition, covenant or other term, the observation or performance of which has been assumed by the lessee expressly or impliedly in the lease.
Conditions implied on leases on part of the lessee.

66.(1) There shall be implied in every lease, covenants by the lessee with the lessor binding the lessee—

(a) to pay the rent reserved by the lease at the times and in the manner specified in the lease;

(b) to use any land in a sustainable manner and in accordance with any conditions imposed on the use of that land by the lease, or any written law or any provisions in a grant of a public land out of which that lease has been created and, in particular, not to cut down, injure or destroy any living tree on the land unless the purpose for which the land has been leased cannot be carried out without so doing;

(c) to yield up the land and buildings in the same condition as they were when the term of the lease began, except that the lessee shall not be bound to repair damage or restore the land and buildings to the same conditions they were at the beginning of the lease if the damage or deterioration of the condition is caused by—

(i) reasonable wear and tear;

(ii) fire, flood or explosion or other accident not attributable to the negligence of the lessee, or the lessee’s invitees or employees;

(iii) civil commotion;

(iv) lightning, storm, earthquake, volcanic activity or other natural disaster;

(d) to keep all boundary marks in repair; and
(e) to keep all buildings comprised in the lease in a reasonable state of repair.

Consent by lessor to application by lessee under lease.

67. (1) On and after the commencement of this Act, a covenant by the lessee not to take an action without the consent of the lessor shall be construed as requiring the lessor not unreasonably to withhold consent to the taking of that action by lessee.

(2) If a lessee applies to the lessor for consent to –

(a) transfer or assign the lease; (b) enter into a sublease;

(c) part with possession of the leased land or buildings;

(d) change the use of the land or buildings from a use which is permitted under the lease;

(e) extend, improve, add on to or in any other way develop any building beyond what is permitted in the lease;

(f) create a charge over the lease;

(g) take any of the actions referred to in subparagraphs (a), (b), (c), (d), (e); or

(h) in relation to any part of the leased land or buildings, or for any part of the term of the lease,

the lessor shall inform the lessee, in writing, within a reasonable time after receiving the application, whether the lessor is giving or refusing consent.

(3) Without limiting the generality of the lessor's obligation under subsection (1), consent is unreasonably withheld if the lessor as a condition of or in relation to the giving of consent—
(a) requires the lessee to pay any money, by way of additional rent, or a premium or a fine or other consideration for the consent, other than the payment of the lessor's reasonable expenses incurred in connection with the giving of consent;

(b) imposes on the lessee any unreasonable condition or precondition; or

(c) the lessee has requested for consent to transfer or assign the lease or enter into a sublease, and the lessor objects to the gender or nationality or other personal characteristic of the transferee, assignee or sub-lessee, in circumstances that a reasonable person would consider those factors irrelevant to the granting of such consent.

(4) If the lessor refuses to give consent or gives consent subject to a condition or pre-condition and the lessee so requests, in writing, the lessor shall promptly inform the lessee, in writing, of the reasons for the refusal or for the imposition of the condition or pre-condition, as the case maybe.

(5) If the lessee or any person, to whom this section applies at the request of the lessee, has paid any money or suffered any loss in connection with subsection (3), that person may recover that money and seek damages for that loss from the lessor.

(6) This section shall not prevent the inclusion, in a lease, of a covenant binding the lessee absolutely not to take any action of the kind referred to in subsection (2).

Merger of lessor’s interest not to affect remedies.

68. If a sublessor surrenders the head lease to the owner or merges the head lease with the land out of which it was created, the owner of the land shall have all the same remedies against the sublessee for non-performance or non-observation of the covenants and conditions expressed or implied in the sublease and all the same
rights to give notice of the termination of the sublessee to the subleases as the sublessor had before the surrendered or merged the head lease.

Transfer and Assignment of Leases

Burden and benefit of covenants to run with the reversion.

69.(1) If the interest held by the lessor under a lease, the reversion, ceases to be so held by the lessor, whether by transfer, assignment, grant, operation of law or otherwise, then, unless a contrary intention, expressly or impliedly, appears from the lease, or from any other circumstance—

(a) the obligations imposed on the lessor by covenant of the lease run with the reversion and may be enforced by the person who is from time to time entitled to the reversion;

(b) the rights to the benefits of every covenant imposed on the lessee, that refers to the subject matter of the lease, may be exercised and enforced by the person who is from time to time entitled to the reversion against the person who is from time to time entitled to the lease.

(2) A person who becomes entitled to exercise a right to which subsection (1) (b) refers may exercise the right even if it first became exercisable or accrued before the time at which that person became so entitled unless before that time, the right was waived or the lessee was released from the obligation to which the right relates.

(3) If, in respect of a lease—

(a) there has been a division of the reversion into different parts so that different persons are lessors of the different parts; or

(b) the lease has terminated in relation to the part of the land comprised in the lease,
the obligations referred to in subsection (1)(a) and the rights and remedies referred to in subsection (1)(b) shall be apportioned, and to the extent required by that apportionment, remain attached to each part of that reversion or to that part of the land in respect of which the lease has not been terminated as the case may require and may be enforced by the person entitled to enforce those obligations under subsection (1)(a) and exercised by the person entitled to exercise those rights and remedies under subsection (1)(b).

Effect of payment by lessee to assignor of reversion.

70. (1) If a lessor has transferred or assigned the reversion, any payment by the lessee of any part of the rent or of any other money due under the lease to the transferor or assignor shall discharge the lessee to the extent of that payment unless the lessee had actual notice of the transfer or assignment before making the payment.

(2) Notwithstanding any other provision to the contrary in any other written law, the registration of a transfer of the reversion shall not, for purposes of subsection (1), in itself, be an actual notice to the lessee of the transfer.

Transferor or assignor of lease released from liability to pay rent and observe covenants thereafter.

71. (1) In respect of any lease or any transfer or assignment of a lease or part of it made or coming into effect on or after the date of the commencement of this Act,—

(a) the rule of the common law that a transferor or assignor of a lease remains liable on the personal covenant to the lessor for payment of rent and for all breaches of covenants, notwithstanding that the transferor or assignor is no longer in possession or occupation of the leased land, shall cease to apply; and

(b) the effect of a transfer or assignment of a lease is, as from that date, to discharge absolutely and without more the transferor or assignor from any obligation to pay rent or to
observe any covenants in respect of the land as from the date of the transfer or assignment, whether the person to whom the lease has been transferred or assigned is in or goes immediately into occupation or possession of the land so transferred or assigned.

(2) As long as the transferor or assignor remains in occupation of the leased land and notwithstanding the transfer or assignment, that transferor or assignor shall remain liable to pay rent and comply with all the covenants as if the person were still the lessee for as long as the person shall remain in occupation.

(3) Subsection (1) shall not absolve a transferor or assignor of a lease from any obligation to pay rent or remedy and breach of a covenant that accrued or arose during the term of the lease when that transferor or assignor was bound by all the covenants in that lease and the lessor may enforce all such obligations of that lease that have so accrued or arisen against that transferor or assignor notwithstanding that the lease has been transferred or assigned.

(4) As from the date of the commencement of this Act—

(a) the rule of common law that a lessee remains liable to pay rent and comply with all the covenants notwithstanding that the lessee has, with the agreement of the lessor, vacated the leased land before the date for the termination of the lease, shall cease to apply; and

(b) subsection (5) shall forthwith apply.

(5) A lessee who, with the agreement of the lessor, vacates land before the termination of a lease shall remain liable to pay rent and observe all the covenants in the lease for one year from the date on which the lessee vacates the land or buildings, unless the lease provides expressly for a shorter period, and if the lessor leases that land or any buildings to another person before the end of one year,
the provisions of subsection (1) shall apply, with effect from the date of the execution of that lease.

(6) Subsection (1) shall not absolve a lessee to whom subsection (5) applies, from any obligation to pay rent or remedy a breach of a covenant that accrued or arose during the term of the lease when that lessee was bound by all the covenants in that lease and the lessor may enforce all such obligations of that lease that have accrued or arisen against that lessee notwithstanding the fact that the lessee has vacated the land.

(7) The provisions of subsections (1) and (5) shall apply in a similar manner to the transfer, or assignment of a lease of a part of the leased land and to the vacating of a part of the leased land as they apply to the transfer of assignment of the lease of all the land and the vacating of all the land comprised in the lease.

(8) Any term expressed or implied in a lease or in a condition or covenant in a lease that is in conflict with this section shall be void.

**Transferor or assignee as lessee**

72. (1) A person who accepts a transfer or assignment of a lease shall become the lessee and shall not be required to—

(a) acknowledge the lessor as such;

(b) take possession of the land or building that is the subject of the lease.

(2) A person to whom this section applies who becomes a lessee—

(a) shall pay the lessor the rent payable under the lease;

(b) shall observe and perform all the covenants on the part of the lessee expressed or implied in the lease; and

(c) may enforce all covenants made by and binding on the lessor expressed or implied in the lease.
Lessor's right of forfeiture.

73. (1) Subject to the provisions of section 76 and to any provisions to the contrary in the lease, the lessor shall have the right to forfeit the lease if the lessee –

(a) commits any breach of, or omits to perform, any agreement or condition on his part expressed or implied in the lease; or

(b) is adjudicated bankrupt; or

(c) being a company, goes into liquidation.

(2) The right of forfeiture may be –

(a) exercised, where neither the lessee nor any person claiming through or under him is in occupation of the land, by entering upon and remaining in possession of the land; or

(b) enforced by action in the court.

(3) The acceptance by the lessor of any rent after the service of a notice of forfeiture under section 75 does not operate as a waiver of the lessor's right of forfeiture unless the lessor has by any other positive act shown an intention to treat the lease as subsisting.

Effect of forfeiture on subleases

74. The forfeiture of a lease determines every sublease and every other interest appearing in the register relating to that lease, but–

(a) where the forfeiture is set aside by the court on the grounds that it was procured by the lessor in fraud of the sublessee; or
(b) where the court grants relief against the forfeiture under section 76, every such sublease and other interest shall be deemed not to have determined.

Notice before forfeiture.

75. Notwithstanding anything to the contrary contained in the lease, no lessor shall be entitled to exercise the right of forfeiture for the breach of any agreement or condition in the lease, whether expressed or implied, until the lessor has served on the lessee a notice of not less than thirty days –

(a) specifying the particular breach complained of; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach within such reasonable period as is specified in the notice; and

(c) in any case other than non-payment of rent, requiring the lessee to make compensation in money for the breach,

and the lessee has failed to remedy the breach within thirty days thereafter, if it is capable of remedy, and to make reasonable compensation in money.

Relief against forfeiture.

76. (1) A lessee upon whom a notice has been served under section 75, or against whom the lessor is proceeding, by action or re-entry, to enforce his right of forfeiture, may apply to the court for relief; and the court may grant or refuse relief, as the court, having regard to the proceedings and the conduct of the parties and the circumstances of the case, thinks fit, and, if it grants relief, may grant it on such terms as it thinks fit.

(2) The court, on application by any person claiming as sublessee or chargee any interest in the property or part of the property comprised in the lease forfeited or sought to be forfeited, may make an order vesting the property or such part in such sublessee or chargee
for the whole period of the lease or any less period, upon such conditions as the court in the circumstances of the case thinks fit:

Provided that nothing in this subsection shall apply in the case of a forfeiture arising from a breach to which the sublessee is a party, or from the breach of an express agreement or condition against subleasing, parting with the possession of or disposing of the property leased.

(3) This section shall have effect notwithstanding any stipulation or agreement to the contrary and whether the lease is registered or not.

**Unlawful eviction.**

77. (1) A lessee who is evicted from the whole or a part of the leased land or buildings, contrary to the express or implied terms and conditions of a lease, shall be immediately relieved of all obligation to pay any rent or other monies due under the lease or perform any of the covenants and conditions on the part of the lessee expressed or implied in the lease in respect of the land or buildings or part thereof from which the lessee has been so evicted.

(2) For purposes of this section, a lessee shall be considered as having been evicted from the whole or part of the leased land or buildings, if, on the commencement of the lease, the lessee is unable to obtain possession of the land or buildings or part thereof, as a result of any action or non-action of the lessor or any of the lessor’s agents or employees, contrary to the express or implied terms of the lease:

Provided that a lessee who is aggrieved as a result of unlawful eviction under this section may commence an action against the lessor for remedies.

**PART VII—GENERAL PROVISIONS ON CHARGES**
Application of Part to charges.

78. (1) This Part applies to all charges on land including any charge made before the coming into effect of this Act and in effect at that time, any other charges of land which are specifically referred to in any section in this Part.

(2) References in this Part to "the charged land" shall be taken to mean and include a charged land, a charged lease and sublease and a second or subsequent charge.

Informal charges.

79. (1) An owner of private land or a lessee, by an instrument in the prescribed form, may charge the interest in the land or a part thereof for any purpose including but not limited to securing the payment of an existing or a future or a contingent debt or other money or money's worth or the fulfillment of a condition.

(2) The power conferred by subsection (1) shall include the power to create second and subsequent charges.

(3) A charge of a matrimonial home, shall be valid only if any document or form used in applying for such a charge, or used to grant the charge, is executed by the chargor and any spouse of the chargor living in that matrimonial home, or there is evidence from the document that it has been assented to by all such persons.

(4) The power conferred by this section shall be exercisable subject to—

(a) any prohibition or limitation imposed by this Act or any written law; and

(b) any restriction contained in an instrument creating or affecting the interest in land that is to be the subject of a charge.
(5) A formal charge shall take effect only when it is registered in a prescribed register and a chargee shall not be entitled to exercise any of the remedies under that charge unless it is so registered.

(6) An informal charge may be created where –

(a) a chargee accepts a written and witnessed undertaking from a chargor, the clear intention of which is to charge the chargor’s land or interest in land, with the repayment of money or money’s worth, obtained from the chargee;

(b) the chargor deposits any of the following-

(i) acertificateoftitletotheland;

(ii) a document of lease of land;

(iii) any other document which it is agreed evidences ownership of land or a right to interest in land.

(7) A chargee holding an informal charge may only take possession of or sell the land which is the subject of an informal charge, on obtaining an order of the court to that effect.

(8) An arrangement contemplated in subsection (6)(a) may be referred to as an "informal charge" and a deposit of documents contemplated in subsection (6) (b) shall be known and referred to as a "lien by deposit of documents."

(9) A chargee shall not possess or sell land whose title document have been deposited with the chargor under an informal charge without the an order of the Court.

**Charge of land to take effect as security only.**

80.(1) Upon the commencement of this Act, a charge shall have effect as a security only and shall not operate as a transfer of any interests or rights in the land from the chargor to the chargee but the
The chargee shall have, subject to the provisions of this Part, all the powers and remedies in case of default by the chargor and be subject to all the obligations that would be conferred or implied in a transfer of an interest in land subject to redemption.

(2) In the case of the charge of a lease, the chargee shall not be liable to the lessor for rent or in respect of the covenants and conditions contained or implied in the lease to any greater extent than would have been the case if the charge had been by way of a sublease.

(3) Every charge instrument shall contain-

(a) the terms and conditions of sale;

(b) an explanation of the consequences of default; and

(c) the reliefs that the chargor is entitled to including the right of sale.

Order of priority of charges.

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

(2) Informal charges shall rank according to the order in which they are made provided that a registered informal charge shall take priority over any unregistered informal charge.

(3) If two informal charges are made on the same day or are registered on the same day, the charge which was first in time to be made or registered shall have priority.

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

(5) The rules of priority for informal charges shall apply as far as the circumstances shall permit liens by deposit of documents.

**Tacking.**

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

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

(a) the provision for further advances is noted in the register in which the charge is registered; or

(b) the subsequent chargor has consented in writing to the priority of the further advance.

(3) Except as provided for in this section there is no right to tack.

(4) Where a charge provides for the payment for a principal sum by way of installments, the payment of those installments shall not be taken to be a further advance.

**Consolidation.**

83. (1) Unless there is an express provision to the contrary clearly set out in the charge instrument, a chargor who has more than one charge with a single chargee on several securities may discharge any of the charges without having to redeem all charges.

(2) A chargee who has made provision in accordance with subsection (1) for the consolidation of charges shall record that right in the register or registers against all the charges so consolidated that are registered.
(3) Upon commencement of this Act, the rules of equity applicable to consolidation shall not apply to charges.

**Variation of interest rate.**

84. (1) Where it was contractually agreed upon that the rate of interest is variable, the rate of interest payable under a charge may be reduced or increased by a written notice served on the chargor by the chargee,—

(a) giving the chargor at least thirty days notice of the reduction or increase in the rate of interest; and

(b) stating clearly and in a manner that can be readily understood, the new rate of interest to be paid in respect of the charge.

(2) The amount secured by a charge may be reduced or increased by a memorandum which shall—

(a) comply with subsection (5); and (b) be signed—

(i) in the case of a memorandum of reduction by the chargee; or

(ii) by the chargor; and

(c) state that the principal funds intended to be secured by the charge are reduced or increased as the case may be, to the amount or in the manner specified in the memorandum.

(3) The term of a charge may be reduced, extended or renewed by a memorandum which—

(a) complies with subsection (5);

(b) is signed by the chargor and the chargee; and
(c) states that the term of the charge has been reduced, extended or renewed, as the case may be, to the date or in the manner specified in the memorandum.

(4) The covenants, conditions and powers expressed or implied in a charge are varied in the manner specified in the memorandum.

(5) A memorandum for the purposes of subsections (2), (3) and (4) shall—

(a) be endorsed on or annexed to the charge instrument; and

(b) upon endorsement or being annexed to the charge instrument, vary the charge in accordance with the terms of the memorandum.

Right to discharge.

85. (1) Subject to the provisions of this section, the chargor shall, upon payment of all money secured by a charge and the performance of all other conditions and obligations under the charge, be entitled to discharge the charge at any time before the charged land has been sold by the chargee or a receiver under the power of sale.

(2) Any agreement or provision in a charge instrument that is inconsistent with subsection (1) shall be void to the extent that it—

(a) purports to deprive the chargor of the right to discharge;

(b) seeks to fetter the exercise of this right; or

(c) stipulates for a collateral advantage that is unfair and unconscionable or inconsistent with the right to discharge.

(3) A chargee may provide, in a charge instrument, that a chargor who wishes to exercise the right to discharge the charge at any time before the expiry of the term of the charge—
(a) shall give one month’s notice of the intention to discharge; or

(b) shall pay not more than one month’s interest at the rate at which interest is payable on the principal sum secured by the charge or at any lesser rate which may be agreed, as well as paying all other money secured by the charge.

(4) A discharge of the whole or a part of a charge shall be as prescribed under this Act or any other law.

(5) For the avoidance of doubt, a discharge includes a reconveyance and a re-assignment of charge or any other instrument used in extinguishing of interests in land conferred by charges.

Transfer of charge.

86. (1) A chargor or any person referred to in subsection (2) may, at any time, other than a time when the chargee is in possession of the charged land, in writing, request the chargee to transfer the charge to a person named in the request.

(2) Subject to the consent of the chargor which shall not be unreasonably withheld, the other persons who may make a written request under subsection (1) are—

(a) any person who has an interest in the land, lease or land, that is the subject of the charge;

(b) any surety for the payment of the amount secured by the charge; and

(c) any creditor of the chargor who has obtained a decree for sale of the land, lease or charge, that is the subject of the charge.

(3) The charge shall, on receiving a written request made under subsection (1) and on payment by the person or persons making the request of all money that would have been payable if discharge of the
charge had been made under section 102, and the performance of all other obligations secured by the charge, transfer the charge to the person named in the written request.

**Chargee’s consent to transfer.**

87. If a charge contains a condition, express or implied that chargor prohibits the chargee from, transferring, assigning, leasing, or in the case of a lease, subleasing the land, without the consent of the chargee, no transfer, assignment, lease or sublease shall be registered until the written consent of the chargee has been produced to the Registrar.

*Covenants, Conditions and Powers Implied in Charges*

**Implied covenant by the chargor.**

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

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

(b) to pay all rates, charges, rent, taxes and other outgoings that are at all times payable in respect of the charged land;

(c) to repair and keep in repair all buildings and other improvements upon the charged land or to permit the chargee or chargee's agent to enter the land and examine the state and condition of such buildings and improvements at after a seven days notice to the chargor until the charge is discharged;

(d) to ensure by insurance or any other means that may be prescribed or which are appropriate, that resources will be available to make good any loss or damage caused by fire to
any building on the land, and where insurance is taken out, it is done so in the joint names of the chargor and chargee with insurers approved by the chargee and to the full value of all the buildings;

(e) in the case of a charge of land used for agricultural purposes, to use the land in a sustainable manner in accordance with the principles and any conditions subject to which the land or lease under which the land is held, and in compliance with all written laws and lawful orders applicable to that use of the land;

(f) not to lease or sublease the charged land or any part of it for any period longer than a year without the previous consent in writing of the chargee, which consent shall not be unreasonably withheld;

(g) not to transfer or assign the land or lease or part of it without the previous consent in writing of the chargee which consent shall not be unreasonably withheld;

(h) in the case of a charge of a lease, during the continuance of the charge, to pay, perform and observe the rent, covenants and conditions contained in or implied by and in the lease contained and implied and on the part of the lessee to be paid, performed and observed and to keep the chargee indemnified against all proceedings, expenses and claims on account of non-payment any part of the rent or part of it or the breach or non-observance of any covenants and conditions referred to above, and, if the lessee has an enforceable right to renew the lease, to renew it;

(i) if the charge is a second or subsequent charge, that he chargor will pay the interest from time to time accruing on each prior charge when it becomes due and will at the proper time repay the principal money or part of it due on each prior charge at the proper time;
(j) if the chargor fails to comply with any of the covenants implied by paragraphs (b), (c), (d), (e) and (h) of this subsection, that the chargee may spend any money which is reasonably necessary to remedy the breach and may add the amount so spent to the principal money and that amount shall be deemed for all purposes to be a part of the principal money secured by the charge.

(2) Reference to the obligation of the chargor in subsection (1) (b) to keep all buildings upon the charged land in repair shall be taken to be an obligation to keep such buildings in a reasonable state of repair as set out in section 65.

(3) The provisions of section 66 shall apply to an application by a chargor to a chargee for consent under paragraphs (f) and (g) of subsection (1).

Equity redemption.

89. (1) Any rule of law, written or unwritten, entitling a chargee (chargee) to foreclose the equity of redemption in charged land is prohibited.

(2) Upon commencement of this Act, a chargee shall not be entitled to enter into possession of the charged land or a charged lease or to receive the rents and profits of that land or lease by reason only that default has been made in the payment of the principal sum or of any interest or other periodic payment or of any part thereof or in the performance or observance of any agreement expressed or implied in the charge, other than in accordance with the provisions of this Act.
Remedies of a chargee.

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

(2) The notice required by subsection (1) shall adequately inform the recipient of the following matters—

(a) the nature and extent of the default by the chargor;

(b) if the default consists of the non-payment of any money due under the charge, the amount that must be paid to rectify the default and the time, being not less than three months, by the end of which the payment in default must have been completed;

(c) if the default consists of the failure to perform or observe any covenant, express or implied, in the charge, the thing the chargor must do or desist from doing so as to rectify the default and the time, being not less than two months, by the end of which the default must have been rectified;

(d) the consequence that if the default is not rectified within the time specified in the notice, the chargee will proceed to exercise any of the remedies referred to in this section in accordance with the procedures provided for in this sub-part; and

(e) the right of the chargor in respect of certain remedies to apply to the court for relief against those remedies.

(3) If the chargor does not comply within two months after the date of service of the notice under, subsection (1), the chargee may—
(a) sue the chargor for any money due and owing under the charge;

(b) appoint a receiver of the income of the charged land;

(c) lease the charged land, or if the charge is of a lease, sublease the land;

(d) enter into possession of the charged land; or

(e) sell the charged land;

(4) If the charge is a charge of land held for customary land, or community land shall be valid only if the charge is done with concurrence of members of the family or community the chargee may—

(a) appoint a receiver of the income of the charged land;

(b) apply to the court for an order to—

(i) lease the charged land or if the charge is of a lease, sublease the land or enter into possession of the charged land;

(ii) sell the charged land to any person or group of persons referred to in the law relating to community land.

(5) The Cabinet Secretary shall, in consultation with the Commission, prescribe the form and content of a notice to be served under this section.

**Chargee’s action for money secured by charge.**

91. (1) The chargee may sue for the money secured by the charge only if—
(a) the chargor is personally bound to repay the money;

(b) by any cause other than the wrongful act of the chargor or chargee, the security is rendered insufficient and the chargee has given the chargor a reasonable opportunity to provide additional sufficient security and the chargor has failed to provide that additional security; or

(c) the chargee is deprived of the whole or part of the security through or in consequence of, a wrongful act or default of the chargor.

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

Appointment, powers, remuneration and duties of the receiver.

92. (1) It shall be an implied condition in every charge that the chargee shall have the power to appoint a receiver of the income of the charged land.

(2) Before appointing a receiver under this section, the chargee shall serve a notice in the prescribed form on the chargor and shall not proceed with the appointment until a period of thirty days, from the date of the service of that notice, has elapsed.

(3) A chargee shall appoint a receiver, in writing, and the chargee shall sign the instrument of appointment.

(4) A receiver may, at any time, be removed and a new receiver appointed, in writing, by the chargee.

(5) A receiver appointed under this section shall be deemed to be the agent of the chargor for the purposes for which the receiver is appointed, and the chargor shall, unless the charge instrument
provides otherwise, be solely responsible for the acts and defaults of the receiver.

(6) The receiver shall have the power to demand and recover all the income of which the receiver is appointed, by action or otherwise, in the name of the chargor, and to give effectual receipts for the same.

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

(8) The receiver shall apply all money received in the following order of priority—

(a) first, in the payment of all rents, rates, charges, taxes and other outgoings required to be paid in respect of the charged property;

(b) second, in keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the charge of which the receiver is appointed;

(c) third, in payment of the receiver’s commission and expenses;

(d) fourth, in payment of all reasonable expenses incurred in the doing of anything that a receiver is required or entitled to do in respect of the charged land, including but not limited to—

(i) the payment of any premiums on any insurance policy properly payable under the charge instrument; and
(ii) the costs of undertaking necessary and proper repairs to any buildings comprised in the charged land as directed in writing by the chargee,

(e) fifth, in the repayment of any money paid or advanced by the chargee to meet the reasonable expenses referred to in paragraphs (a), (b), (c) and (d) together with any interest on any amount so paid or advanced at the rate at which interest is payable on the principal sum secured by the charge;

(f) sixth, in payment of the interest accruing due in respect of any principal sum secured by the charge;

(g) seventh, in and towards the discharge of the principal sum secured by the charge, and payment of the residue, if any, to the chargor or other person entitled to the charged land.

**Chargee’s power of leasing.**

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

(a) to grant leases in respect of the charged land or any part thereof; and

(b) to accept a surrender of any lease so granted and of any lease granted by the chargor,

and, for that purpose may, execute, in place of the chargor any instrument required to execute that lease or surrender in place of the chargor.

(2) Before granting a lease under this section, a chargee shall serve a notice on the chargor in the prescribed form and shall not
proceed with the granting or execution of that lease until thirty days have elapsed from the service of that notice.

(3) Every lease granted by the chargee shall—

(a) be made to take effect in possession not later than six months after its date;

(b) reserve the best rent that can reasonably be obtained in the circumstances;

(c) be for a term not exceeding fifteen years or the length of the term of the charge whichever is the shorter subject to the provisions of subsection (5) (a);

(d) contain any reasonable terms and conditions, having regard to the interests of the chargor and of any other persons having an interest in the charged land; and

(e) contain a declaration that the chargee has appointed a receiver, with the date of the appointment.

(4) A lease created by a chargee under this section shall not be binding on any person holding, and shall not take priority over, any charge that has priority to the charge of the chargee who has granted the lease.

(5) If money has been advanced on the security of a customary charge, a lease created out of that charged land shall—

(a) be for a term not exceeding two years; and

(b) in the case of—
(i) land used for agricultural purposes, ensure that the chargor is left in possession of sufficient land and buildings to provide for the chargor and dependants;

(ii) a dwelling house, ensure that the chargor is left sufficient space in that dwelling house or is provided with alternative accommodation to enable the chargor to provide basic shelter for the chargor and dependants living with the chargor.

Power of the chargee to take possession of the charged land.

94. (1) Upon expiry of the period specified in section 90 (2) (b) and (c), a chargee may serve on the chargor a notice of intention to enter, in the prescribed form, notifying the chargor that the chargee intends to enter into possession of the whole or a part of the charged land at a date that is at least one month from the date of the service of the notice.

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

(a) entering into and taking physical possession of the land or a part of it peaceably and without committing any forcible entry; or

(b) asserting management or control over the land by serving a notice in the prescribed form requiring any lessee of the chargor or any other owner of the land to pay to the chargee any rent or profits that would otherwise be payable to the chargor.

(3) The chargee shall be regarded as being in possession on the date—

(a) on which the chargee enters into possession in accordance with of subsection (2) (a); or
(b) on which the chargee first receives any rent or profit from the land.

(4) A chargee who has entered into possession may remain in possession.

(5) A chargee in possession shall be bound by all those covenants set out in of section 88 (1) (a) to (e), (h), (i) and (j) as if that chargee were the chargor referred to in that subsection.

(6) A chargee in possession of any charged land—

(a) by occupation, shall be entitled to manage the land and take all its profits, but shall be liable to the chargor for any act by which the value of the land, or any buildings on, or other permanent improvements to the land are impaired or the chargor otherwise suffers loss;

(b) whether by occupation or by receipt of rents and profits shall be accountable to the chargor not only for the sums actually received, but also for any additional sums that the chargee might reasonably have been expected to receive by the careful and business like exercise of the chargee's powers;

(c) may renew a lease granted by the chargor on the same terms as the original lease but may not otherwise grant any lease out of the charged land.

(7) A chargee in possession shall apply all money to the same payments and in the same order as apply to a receiver as set out in section 92 (8), except that a chargee in possession shall not be entitled to receive any payments under paragraph (c) of that subsection.

(8) Any person on whom a notice under subsections (1) or (2) has been served shall forthwith comply and continue to comply with that notice until either—
(a) a notice of withdrawal in the prescribed form is served on that person by the chargee in possession; or

(b) the chargee in possession withdraws from that possession; or

(c) a court orders the chargee in possession to withdraw from possession.

Withdrawal of lender from possession.

95. (1) A chargee may, not sooner than one month after the service of a notice of withdrawal, serve in the prescribed form on the chargor and on all persons served with a notice under section 94 (1) and (2), withdraw from possession of the charged land.

(2) A chargee shall withdraw from possession of the charged land if—

(a) a court makes an order directing the chargee to withdraw;

(b) the chargee appoints a receiver under section 90(3);

(c) the default which was the cause of the entry into possession has been rectified through the possession of the chargee;

(d) the chargee has exercised the power of sale under section 96; or

(e) the chargor has discharged all liabilities under the charge.

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

(a) by subsection (2) (a), when the order of the court is made;
(b) by subsection (2) (b), when the receiver has been appointed in accordance with section 104;

(c) by (2) (c), when the chargee —

(i) has ceased to occupy the charged land; or

(ii) is not in occupation, and has served a notice of withdraw on all persons served with a notice under section 96 (1) and (2) or section 97;

(d) by subsection (2) (d), when the purchaser of the charged land enters into occupation of that land; or

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

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

**Chargee’s power of sale.**

96. (1) Where a chargor is in default of the obligations under a charge and remains in default at the expiry of the time provided for the rectification of that default in the notice served on the chargor under section 90 (1), a chargee may exercise the power to sell the charged land.

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

(a) by subsection (2) (a), when the order of the court is made;
(b) by subsection (2) (b), when the receiver has been appointed in accordance with section 104;

(c) by (2) (c), when the chargee —

(i) has ceased to occupy the charged land; or

(ii) is not in occupation, and has served a notice of withdraw on all persons served with a notice under section 96 (1) and (2) or section 97;

(d) by subsection (2) (d), when the purchaser of the charged land enters into occupation of that land; or

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

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

**Chargee’s power of sale.**

96. (1) Where a chargor is in default of the obligations under a charge and remains in default at the expiry of the time provided for the rectification of that default in the notice served on the chargor under section 90 (1), a chargee may exercise the power to sell the charged land.

(2) Before exercising the power to sell the charged land, the chargee shall serve on the chargor a notice to sell in the prescribed form and shall not proceed to complete any contract for the sale of the charged land until at least forty days have elapsed from the date of the service of that notice to sell.

(3) A copy of the notice to sell served in accordance with subsection (2) shall be served on—
(a) the Commission, if the charged land is public land;

(b) the holder of the land out which the lease has been granted, if the charged land is a lease;

(c) a spouse of the chargor who had given the consent;

(e) any lessee and sublessee of the charged land or of any buildings on the charged land;

(f) any person who is a co-owner with the chargor;

(g) any other chargee of money secured by a charge on the charged land of whom the chargee proposing to exercise the power of sale has actual notice;

(h) any guarantor of the money advanced under the charge;

(i) any other person known to have a right to enter on and use the land or the natural resources in, on, or under the charged land by affixing a notice at the property; and

(j) any other persons as may be prescribed by regulations, and shall be posted in a prominent place at or as near as may be to the charged land.

**Duty of chargee exercising power of sale.**

97. (1) A chargee who exercises a power to sell the charged land, including the exercise of the power to sell in pursuance of an order of a court, owes a duty of care to the chargor, any guarantor of the whole or any part of the sums advanced to the chargor, any chargee under a subsequent charge or under a lien to obtain the best price reasonably obtainable at the time of sale.

(2) A chargee shall, before exercising the right of sale, ensure that a forced sale valuation is undertaken by a valuer.
(3) If the price at which the charged land is sold is twenty-five per centum or below the market value at which comparable interests in land of the same character and quality are being sold in the open market—

(a) there shall be a rebuttable presumption that the chargee is in breach of the duty imposed by subsection (1); and

(b) the chargor whose charged land is being sold for that price may apply to a court for an order that the sale be declared void, but the fact that a plot of charged land is sold by the chargee at an undervalue being less than twenty-five per centum below the market value shall not be taken to mean that the chargee has complied with the duty imposed by subsection (1).

(4) It shall not be a defence to proceedings against a chargee for breach of the duty imposed by subsection (1) that the chargee was acting as agent of or under a power of attorney from the chargor or any former chargor.

(5) A chargee shall not be entitled to any compensation or indemnity from the chargor, any former chargor or any guarantor in respect of any liability arising from a breach of the duty imposed by subsection (1).

(6) The sale by a prescribed chargee of any community land occupied by a person shall conform to the law relating to community land save that such a sale shall not require any approval from a Community Land Committee.

(7) Any attempt by a chargee to exclude all or any of the provisions of this section in any charge instrument or any agreement collateral to a charge or in any other way shall be void.

Powers incidental to the power of sale.

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

(b) subject to or free of any charge or other encumbrance or charge having priority to the chargee’s charge;

(c) by way of subdivision or otherwise;

(d) by private contract at market value;

(e) public auction with reserve price;

(f) for a purchase price payable in one sum or by installments; or

(g) subject to any other conditions that the chargee shall think fit, having due regard to the duty imposed by section 97 (1).

(2) If a sale is to proceed by public auction, it shall be the duty of the chargee to ensure that the sale is publicly advertised in such a manner and form as to bring it to the attention of persons likely to be interested in bidding for the charged land and that the provisions relating to auctions and tenders for land are, as near as may be, followed in respect of that sale.

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

(4) Upon registration of the land or lease or other interest in land sold and transferred by the chargee the interest of the chargor as described therein shall pass to and vest in the purchaser free of all liability on account of the charge, or on account of any other charge or encumbrance to which the charge has priority, other than a lease easement to which the chargee had consented in writing.
Protection of purchaser

99. (1) This section applies to—

(a) a person who purchases charged land from the chargee or receiver, except where the chargee is the purchaser; or

(b) a person claiming the charged land through the person who purchases charged land from the chargee or receiver, including a person claiming through the chargee if the chargee and the person so claiming obtained the charged land in good faith and for value.

(2) A person to whom this section applies—

(a) is not answerable for the loss, misapplication or non-application of the purchase money paid for the charged land;

(b) is not obliged to see to the application of the purchase price;

(c) is not obliged to inquire whether there has been a default by the chargor or whether any notice required to be given in connection with the exercise of the power of sale has been duly given or whether the sale is otherwise necessary, proper or regular.

(3) A person to whom this section applies is protected even if at any time before the completion of the sale, the person has actual notice that there has not been a default by the chargor, or that a notice has been duly served or that the sale is in some way, unnecessary, improper or irregular, except in the case of fraud, misrepresentation or other dishonest conduct on the part of the chargee, of which that person has actual or constructive notice.
(4) A person prejudiced by an unauthorised, improper or irregular exercise of the power of sale shall have a remedy in damages against the person exercising that power.

**Purchase by chargee.**

100. (1) Other than in the circumstances provided to in subsection (3), a chargee exercising the power of sale may, with leave of the Court, purchase the property.

(2) A court shall not grant leave unless the chargee satisfies the court that a sale of the charged land to the chargee is the most advantageous way of selling the land so as to comply with the duty imposed on the chargee by section 97 (1).

(3) If the charged land is to be sold by public auction, the chargee may bid for and purchase the charged land at that public auction so long as the price bid for the charged land by the chargee is the greater of—

(a) the highest price bid for that land at the auction; and

(b) an amount equal to or higher than the reserve price, if any, put upon the land before the auction, whichever amount is the greater.

(4) If a chargee who has sold charged land to the chargee applies to the Registrar to be registered as the lawful owner of land under a land or lease, the Registrar may require that chargee to provide any evidence that the Registrar may specify showing that the provisions of this section have been complied with and the Registrar shall not be obliged to register any such land or lease until the chargee has so satisfied the Registrar.

**Application of proceeds of sale of charged land.**

101. The purchase money received by a chargee who has exercised the power of sale shall be applied in the following order of
priority—

(a) first, in payment of any rates, rents, taxes, charges or other sums owing and required to be paid on the charged land;

(b) second, in discharge of any prior charge or other encumbrance subject to which the sale was made;

(c) third, in payment of all costs and reasonable expenses properly incurred and incidental to the sale or any attempted sale;

(d) fourth, in discharge of the sum advanced under the charge or so much of it as remains outstanding, interests, costs and all other money due under the charge, including any money advanced to a receiver in respect of the charged land under section 92; and

(e) fifth, in payment of any subsequent charges in order of their priority, and the residue, if any, of the money so received shall be paid to the person who, immediately before the sale, was entitled to discharge the charge.

Right of chargor to discharge charge on payment of any sum due any time before sale.

102. (1) At any time before the charged land is sold, or withdrawn from sale, the chargor or any other person entitled to discharge the charge may discharge the charge in whole or in part by paying to the chargee all money secured by the charge at the time of payment.

(2) If payment is made under subsection (1), the chargee shall deliver to the chargor—
(a) a discharge of the charge in the prescribed form over the whole or that part of the charged land to which the payment relates; and

(b) all instruments and documents of title held by the chargee in connection with the charged land.

Application for relief by chargor.

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

(a) the chargor;

(b) if two or more persons are joint chargors, by one or more of them on their own behalf;

(c) a spouse of the chargor;

(d) a lessee of the chargor; or

(e) the trustee in bankruptcy of the chargor.

(2) If an application made in accordance subsection (1) (b) is not made by all the joint chargors, then, unless the court orders otherwise, it must be served on all the joint chargors.

(3) An application for relief may be made at any time after the service of a notice under section 90 (1), section 91 (2), section 94(1), section 95 (1), or during the exercise of any of the remedies contemplated in those sections.

(4) An application for relief is not to be taken as an admission by the chargor or any other person applying for relief that—
(a) there has been a breach of a covenant of the charge by the chargor;

(b) by reason of such a breach, the chargee has the right to exercise the remedy in respect of which the application for relief has been made;

(c) all notices that were required to be served by the chargee were properly served; or

(d) the period for remedying the breach specified in the notice served under section 90 was reasonable or had expired, and the court may grant relief without determining all or any of the matters described in paragraphs (a), (b), (c) or (d).

Power of the court in respect of remedies and reliefs.

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

(a) shall, have regard to whether the remedy which the chargee proposes to exercise is reasonably necessary to prevent any or any further reduction in the value of the charged land or to reverse any such reduction as has already occurred if the charged land consists of agricultural land or commercial premises, and the remedy proposed is to appoint a receiver, or to take possession of or lease the land or a part thereof;

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

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

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

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

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

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

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

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

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

(a) cancel, vary, suspend or postpone the order for any period which the court thinks reasonable;
(b) extend the period of time for compliance by the chargor with a notice served under section 90;

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

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

(3) If under the terms of a charge, the chargor is entitled or is to be permitted to pay the principal sum secured by the charge by installments or otherwise to defer payment of it in whole or in part but provision is also made in the charge instrument or any collateral agreement for earlier payment of the whole sum in the event of any default by the chargor or of a demand by the chargee or otherwise, then for purposes of this section the court may treat as due under the charge in respect of the principal sum secured and of interest on it only the amounts that the chargor would have expected to be required to pay if there had been no such provision for earlier payment.

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

(a) the default in issue has been remedied;
(b) the threat to the security has been removed;

(c) the chargor has taken the steps that the charger was
required to take by the notice served under section 90;
and

(d) the chargee has taken or attempted to take some action
against the chargor in contravention of section 90 (4).

Power of the court to re-open certain charges and revise terms

105. (1) The Court may reopen a charge of whatever amount
secured on a matrimonial home, in the interests of doing justice
between the parties.

Exercise of power to re-open certain charges.

106. (1) The court may exercise the powers conferred on it by
this Act either—

(a) on an application made to it for that purpose by either the
chargor or the chargee—

(i) to enforce the charge; or

(ii) to commence an action under section 90; or

(b) on an application by the chargor for relief against the
exercise by the chargee of any remedy in connection
with a default by the chargor under a charge; or

(c) on an application by the Registrar in respect of—
(i) charges provided by one or more specific chargees
where there is prima facie evidence of a pattern of
unfair dealing and practices by that chargee or those
chargees; or
(ii) a chargee, being a corporate body, that appears to exercise discrimination against chargors on account of their gender, or by refusing to grant charges to persons on account of their gender except that a chargee, being a corporate body that is implementing any programme, approved or assisted by the national or county governments, designed to assist women to improve their economic and social position by providing them with advances secured by a charge of land shall not be taken to be acting in discriminatory manner if the advances under that programme are made only to women.

(2) In reopening the charge, the court may—

(a) direct that the charge shall have effect subject to modifications that the court shall order;

(b) require the chargee to repay the whole or part of any sum paid under the charge or any related or collateral agreement by the chargor or any guarantor or other person who assumed an obligation under the charge whether it was paid to the chargee or any other person;

(c) require the chargee to pay any compensation to the chargor which the court shall think fit; or

(d) direct the chargee, being a corporate body to cease acting in a discriminatory manner with respect to the granting of charges.

(3) In considering whether to exercise the powers conferred on it by this section, the court shall have regard to—
(a) the age, gender, experience, understanding of commercial transaction, and health of the chargor at the time when the charge was created, if the chargor is an individual;

(b) the financial standing and resources of the chargor relative to those of the chargee at the time of the creation of the charge;

(c) the degree to which, at the time of the creation of the charge, the chargor was under financial pressure and the nature of that pressure;

(d) the interest rates prevailing at the time of the creation of the charge and during the continuation of the charge and the relationship of those interest rates to the interest rate applying from time to time in the charge;

(e) the degree of risk accepted by the chargee, having regard to the value of the charged land and the financial standing and other resources of the chargor;

(f) the importance of not undermining the confidence of reputable chargees in the market for charges; and

(g) any other factors that the court considers relevant.

PART VIII—COMPULSORY ACQUISITION OF INTERESTS IN LAND

Power of entry to inspect land.

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

(2) The Commission shall prescribe a criteria and guidelines to be adhered to by the acquiring authorities in the acquisition of land.
(3) The Commission may reject a request of an acquiring authority, to undertake an acquisition if it establishes that the request does not meet the requirements prescribed under subsection (2) and Article 40(3) of the Constitution.

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

(5) Upon approval of a request under subsection (1), the Commission shall publish a notice to that effect in the Gazette and the county Gazette, and shall deliver a copy of the notice to the Registrar and every person who appears to the Commission to be interested in the land.

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

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

(8) All land to be compulsorily acquired shall be geo-referenced and authenticated by the office or authority responsible for survey at both the national and county government.

Payment for damage entry for inspection.

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.

(2) An authorization under subsection (1) shall not empower a person to enter a building, or an enclosed court or garden attached to a dwelling house, unless that person—
(a) has first obtained the consent of the occupier; or

(b) has served on the occupier a not less than seven days written notice of the intention to enter.

Payment for damage entry for inspection.

109. As soon as practicable after entry has been made under section 108, the Commission shall promptly pay in full, just compensation for any damage resulting from the entry.

Notice of acquisition and effect of acquisition on plant and machinery.

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).

Compensation to be paid.

111. (1) If land is acquired compulsorily under this Act, just compensation shall be paid promptly in full to all persons whose interests in the land have been determined.

(2) The Commission shall make rules to regulate the assessment
of just compensation.

Inquiry as to compensation.

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—

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

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

(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.

Award of compensation.

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—

(i) the size of the land to be acquired;
(ii) the value, in the opinion of the Commission, of the land;
(iii) the amount of the compensation payable, whether the persons interested in the land have or have not appeared at the inquiry; and

(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.

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

Notice of award.

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.

(2) Upon acquisition of land, and prior to taking possession of the land, the Commission may agree with the person who owned that land that instead of receiving an award, the person shall receive a grant of land, not exceeding in value the amount of compensation which the Commission considers would have been awarded, and upon the conclusion of the agreement that person shall be deemed to have conclusively been awarded and to have received all the compensation to which that person is entitled in respect of the interest in that land.

(3) An agreement under subsection (2) shall be recorded in the award.

Payment of compensation.

115. (1) After notice of an award has been served on all the persons determined to be interested in the land, the Commission 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; or

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

(2) In any of the cases referred to in paragraphs (a), (b) and (c) of subsection (1), the Commission may at any time pay the amount of the compensation into a special compensation account held by the Commission, notifying any persons interested accordingly.

Payment in error.

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.

Grant of land in lieu of award.

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 rate prevailing bank rates from the time of taking possession until the time of payment.

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

Additional compensation where area found to be greater.

118. 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.
Payment of interest.

119. Whenever the survey provided for in section 118 discloses that the size of the land acquired is greater or less than the size of the land in respect of which the award has been made, compensation shall be paid for the excess size in accordance with this Act.

Additional compensation where area found to be greater.

120. (1) Only after the award has been made, and the amount of the first offer has been paid, the Commission shall take possession of the land by serving on every person interested in the land a notice that on a specified day possession of the land and the title to the land will vest in the national or county governments as the case may be.

(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 Commission may take possession of uncultivated or pasture or arable land upon the expiration of fifteen days from the date of publication of the notice of intention to acquire, and on the expiration of that time the Commission shall, notwithstanding that no award has been made, take possession of that land in the manner prescribed by subsection (1).

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

(a) the registered proprietor of the land; and

(b) the Registrar, a notice that possession of the land has been taken and that the land has vested in the national or county governments as the case may be.

(4) Upon taking possession and payment of just compensation in full, the land shall vest in the national or county governments absolutely free from encumbrances.
Formal taking of possession and vesting.

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.

(2) On receipt of the documents of title, the Registrar shall—

(a) cancel the title documents if the whole of the land comprised in the documents has been acquired;

(b) if only part of the land comprised in the documents has been acquired, the Registrar shall register the resultant parcels and cause to be issued, to the parties, title documents in respect of the resultant parcels.

(3) If the documents are not forthcoming, the Registrar will cause an entry to be made in the register recording the acquisition of the land under this Act.

Surrender of documents of title to the Commission.

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 disproportionally 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.

**Acquisition of other land on account of severance.**

123. (1) At any time before possession is taken of any land acquired under this Act, the Commission may, revoke a direction to acquire the land, and, shall determine and pay compensation for 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.

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

**Withdrawal of acquisition.**

124. (1) If the Commission 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;

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

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

(2) The Commission shall then serve on every person interested or who claims to be interested in the land to be taken possession of under subsection (1), or on such of them as after reasonable inquiry are known to the Commission, a notice that the Commission is to take possession of the land for the period in question.

(3) At the end of seven days after service of notices has been completed under subsection (2), the Commission may after paying the first offer of compensation, 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.

(4) This section shall not apply where the use of land is likely to cause permanent damage to land.

Power to obtain temporary occupation of land.

125. (1) The Commission shall, as soon as is practicable, before taking possession, pay full and just compensation to all persons interested in the land.

(2) An acquiring authority shall pay the first offer of compensation to the interested parties before taking possession.

Restoration of land.

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

(a) the use of the land shall extend to the passage of vehicles of all kinds, including heavy machinery, whether owned or operated by the public body occupying or using the land or by any contractor or servant employed by that body; and

(b) the compensation to be paid under section 120 shall be limited to the damage done to trees, plants, growing crops and permanent improvements on the land, together with a periodical sum for diminution in the profits of the land and of adjoining land by reason of that use.

Reference of matters to the Court for determination by the Commission.

127. (1) The Commission may at any time, by application in the prescribed form, 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 or, where the Court does not give direction, by the Commission.

Reference to the Environment and Land Court.

128. Any dispute arising out of any matter provided for under this Act may be referred to the Land and Environment Court for determination.

Right of entry.

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.

Penalty for obstruction.

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.

Service of notices.

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

(a) by delivering it to the person personally; (b) by sending it by registered post to the person's

(b) by sending it by registered post to the person's
(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 paragraph (c) and (d), place an advertisement in two newspapers with a national circulation.

Exemption from stamp duty.

132. Stamp duty shall not be chargeable for an award or agreement made under this Act, and no person claiming any such award or agreement shall be liable to pay a fee for a copy of the agreement.

Rules.

133. The Commission may make rules generally for carrying out the purposes and provisions of this Part.

PART IX—SETTLEMENT PROGRAMMES

Establishment of settlement scheme.

134. (1) The Commission shall, on behalf of the national and
county governments, implement settlement programmes to provide access to land for shelter and livelihood.

(2) Settlement programmes shall, for the purposes of this Act, include, but not be limited to provision of access to land to squatters, persons displaced by natural causes, development projects, conservation, internal conflicts or other such causes that may lead to movement and displacement.

(3) The Commission shall, assist the national and county governments in the administration of settlement programmes.

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

(a) sub-county administrator who shall be the chairperson;

(b) a representative of the county government, approved by the county assembly;

(c) a representative of the Commission;

(d) a national government representative;

(e) a representative of persons with special needs; (f) a women’s representative nominated by a local women’s organization prescribed by the county government; and

(g) a youth representative prescribed by the county government.

(5) The Commission shall reserve public land for the establishment of approved settlement programmes, and where public land is not available purchase private land subject to the Public Procurement and Disposal Act, 2005 No. 3 of 2005 or any other law.
(6) Upon planning and survey, land in settlement schemes shall be allocated to households in accordance with national values and principles of governance provided in Article 10 and the principles of land policy provided in Article 60(1) of the Constitution and any other requirements of natural justice.

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

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

(9) The funds provided by the national government and county governments for the purposes of the settlement programmes shall be administered in accordance with the law be relating to public finance management.

**Land Settlement Fund.**

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

(2) There shall be paid into the Fund

(a) any monies appropriated by Parliament for the purposes of the Fund;

(b) any funds provided by bilateral or multilateral donors, for the purpose of the Fund;
(c) gifts, grants, donations or endowments as may be given to
the Commission for the purpose of the Fund;

(d) monies that may be borrowed by the Commission for the
purposes of the Fund;

(e) the rates, charges, dues, or fees levied by the Commission
under this Act;

(f) all monies derived from the payment made by beneficiaries
of settlement schemes; and

(g) such sums as may be payable to the Commission
pursuant to this Act or any other written law.

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

(a) provision of access to land–
   (i) to squatters;

   (ii) to displaced persons;

   (iii) for development projects;

   (iv) for conservation; or

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

(b) purchase of private land for settlement programmes;

(c) establishment and management of refugee camps;

(d) provision of shelter and a livelihood to persons in need of
settlement programmes;
(e) research, documentation and dissemination of information on settlement programmes; and

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

(4) The Fund shall be administered in accordance with the provisions relating to public Funds under the law relating to public finance management.

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

PART X—EASEMENTS AND ANALOGOUS RIGHTS

General

136. (1) In this Part unless the context otherwise requires—

(a) the land for the benefit of which any easement is created is referred to as the "dominant land" and the land of the person by whom an easement is created is referred to as "the servient land"; and

(b) an easement is, in relation to the dominant land referred to as "benefiting that land" and is, in relation to the servient land, referred to as "burdening that land";

(2) Subject to the provisions of this Part, an easement shall be capable of existing only during the subsistence of the land or lease out of which they were created the subsistence of the land on lease of which they were created or in any other manner provided by any other legislation.
**Application of this part.**

137. (1) This Part shall apply to all easements made or coming into force on or after the commencement of this Act.

(2) Subsection (1) shall not, unless stated specifically otherwise, apply to easements, profits, restrictive agreements and all other like restrictions on the use of land having effect in customary law only.

(3) In this Part, reference to "analogous rights" means an access order made under section 140.

**Nature of easement.**

138. (1) Subject to any other written law applicable to the use of land, the rights capable of being created by an easement are—

(a) any rights to do something over, under or upon the servient land; or

(b) any right that something should not be so done;

(c) any right to require the owner of servient land to do something over, under or upon that land;

(d) any right to graze stock on the servient land.

(2) The rights capable of being created by an easement do not include—

(a) any right to take and carry away anything from the servient land;

(b) any right to the exclusive possession of any land.

(3) Unless an easement has been created for specific period of time which will terminate at a fixed date in the future or on the happening of a specific event in the future or on the death of the
grantor, the grantee or some other person named in the grant, an easement burdens the servient land and runs with the land for the same period of time as the land or lease held by the grantor who created that easement.

(4) Subject to the provisions of this part an easement shall be capable of existing only during the subsistence of the land or lease out of which it was created.

**Entry on neighbouring land where easement is refused.**

139. (1) An owner of any dominant land may apply to a court on the prescribed form for an order, referred to as an entry order authorising his or her entry on or over any servient land for the purpose of erecting, repairing, adding to, painting or demolishing the whole or any part of any structure on the dominant land or doing any other necessary or desirable thing on that land.

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

(a) the owner of the servient land; and

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

(2) On an application under subsection (1), the court after hearing the applicant and the persons to whom notice was given under subsection (2), may make an entry order authorising the applicant to do all or any of the following—

(a) to enter on or over the servient land, either personally or through the applicant’s employees, agents or contractors, for any purpose specified in the entry order;
(b) to use for that purpose on or over the servient land any vehicles and other means of transport and any plant machinery, cranes or other equipment as are specified in the entry order;

(c) to store on the servient land such materials as may be required for the purposes of the work and in any quantities that are specified in the entry order.

(3) In determining whether to grant an entry order under subsection (3), the court shall have regard to—

(a) the nature and conduct of the negotiations if any, between the owners of the dominant and servient land with respect to any attempt by the owner of the dominant land to obtain an easement for the purpose for which the entry order is applied for from the owner of the servient land;

(b) the urgency, importance and desirability of the work for which the entry order is being applied for;

(c) the scope of the work and the length of the time for which the entry order is being applied for;

(d) whether the applicant has applied for or obtained all permissions, license and consents required from all relevant public authorities to execute the works;

(e) any other matters that shall appear to the court to be relevant.

(4) An order made under subsection (3) may be made on any condition including—

(a) the period of time during which the entry on or over the servient land is authorized;
(b) the hours of the day during which the work may be done;

(c) the preservation of the safety of persons or property on the servient land;

(d) the preservation, so far as is consistent with the work to be executed, of the natural features and condition of the servient land;

(e) the restoration of the servient land to its former state at the conclusion of the work;

(f) the maintenance of adequate access to the servient land;

(g) the provision of security or indemnity to secure—

   (i) the performance of any conditions of the entry order; or

   (ii) the making good of any damage caused by entry on or over the servient land, or work on or over the land; or

   (iii) the reimbursement of the owner of the servient land for any costs, expenses or loss arising from the entry; and

(h) any other relevant matter.

(5) If, as a result of fire, civil commotion or natural disaster, a structure on the dominant land has become a threat to public safety or public health, and there is an urgent need to effect repairs to or demolish that structure and such action may only be executed by entry on or over the servient land, the owner of the dominant land may enter the servient land and effect the repairs or demolition, after giving at least twenty-four hours' notice in writing to the owner of the servient land, but the entry and execution of works shall not prevent the owner of the servient land from applying to the court for an order requiring the owner of the dominant land to make good any damage caused by the entry and works and to reimburse the owner of the servient land.
for any costs, expenses or loss arising from the entry and works.

(6) In this section—

(a) an owner of land includes an owner under a lease, a lessor and lessee; and

(b) neighbouring land means any land in respect of which an order is sought under this section, whether or not it adjoins the land occupied by the applicant for an entry order.

Access order.

140. (1) An owner of landlocked land may apply in the prescribed form to a court for an access order, granting reasonable access to that land.

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

(a) the owners of each piece of land adjoining the landlocked land;

(b) any person claiming an interest in any such piece of land of whom the applicant has actual notice;

(c) the local authority having jurisdiction in the area where the landlocked land is located;

(d) any other person occupying or having an interest in land which in the opinion of the court may be affected by the granting of the application.

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

(4) In considering whether to grant an access order, the court shall consider—

(a) the nature and quality of the access, if any, to the landlocked land when the applicant first occupied the land;

(b) the circumstances in which the land became landlocked;

(c) the nature and conduct of the negotiations, if any, between the owners of the landlocked land and any adjoining or other land with respect to any attempt by the owner of the landlocked land to obtain an easement from one or more owners of the adjoining or other land;

(d) the hardship that may be caused to the applicant by the refusal of the access order, in comparison to the hardship that may be caused to any other person the making of the order;

(e) the purposes for which access is or may be required; and

(f) any other matter that appears to the court to be relevant.

(5) An access order may be made subject to any conditions including—

(a) the period for which the access order is to be made;

(b) the payment of reasonable compensation by the applicant to any other person;

(c) the allocation of the costs of any work necessary to give effect to the order between the applicant and any other person;
(d) the fencing of any land and the upkeep and maintenance of any such fence;

(e) the upkeep and maintenance of any land over which the access order has been granted;

(f) the execution of any instrument or the completion of any prescribed form or the doing of any other thing necessary to give effect to the order;

(g) any conditions set out in subsection (4) which in the opinion of the court are applicable to an access order; and

(h) any other relevant matter.

(6) An access order made under this section shall be deemed to have all the characteristics and incidents of an easement and the land over which it has been granted shall be deemed to be the servient land and landlocked land shall be deemed to be the dominant land in respect of that easement.

**Enjoyment of easement and analogous rights.**

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

(a) any lessee of the dominant land, or so far as the nature of the easement, or analogous right permit, and part of it, and

(b) any lender on the security of a charge for the time being in possession of the dominant land, or so far as the nature of the easement or analogous right permit, any part of it.
(2) Any person referred to in subsection (1) (a) and (b) who is entitled to the benefit of an easement or analogous right may take in the person’s own name any proceedings necessary to enforce that easement or those analogous rights.

Cancellation and extinguishment of easements and analogous rights.

142. (1) Subject to subsection (3), any easement granted under this part or any analogous right created under this part may be cancelled by the person occupying the dominant land.

(2) Any cancellation under subsection (1) shall be effected in the prescribed form and the easement, or analogous right shall be extinguished on the date that the cancellation is recorded in the register.

(3) On the application of any person occupying servient land, the Registrar may cancel any easement or an analogous right if the Registrar is satisfied that—

(a) the period of time for which the easement or analogous right was intended to subsist has expired; or

(b) the event upon which the easement or analogous right was intended to terminate has occurred.

(4) The consent of any lessee or lender for the time being entitled to the benefit of any easement or analogous right shall be necessary for any cancellation of any such easements or rights and such consent shall be given in the prescribed form.

Public right of way

Power of the Commission to create public rights of way.

143. (1) Subject to and in accordance with this section and section 146, the Commission may, create a right of way which shall be known as public right of way.
(2) A public right of way may be—

(a) a right of way created for the benefit of the national or county government, a local authority, a public authority or any corporate body to enable all such institutions, organisations, authorities and bodies to carry out their functions, referred to in this Act as a wayleave; or

(b) a right of way created for the benefit of the public, referred to in section 145 of this Act as a communal right of way.

(3) A public right of way shall attach to and run with the servient land in respect of which it has been created and shall be binding on all owners from time to time of the servient land, any manner they are occupying the land, whether under a land or a derivative right thereof, or under customary law or as a successor in title to any such owner or as a trespasser.

(4) A wayleave shall authorize persons in the employment to or who are acting as agents of or contractors for any of the organizations, authorities and bodies to enter on the servient land for the purpose of executing works, building and maintain installations and structures and insetting all such works, installations and structures on the servient land and to pass and re-pass along that wayleave in connection with purposes of those organisations, authorities or bodies.

(5) A communal right of way created for the benefit of the public shall entitle the public to pass and re-pass along that right of way and in areas designated for that purpose, to undertake recreational activities or other prescribed activity of the kind permitted in that designated area.

Application for wayleave.

144. (1) Unless the Commission is proposing on its own motion to create a wayleave, an application, for the creation of a wayleave,
shall be made by any State department, or the county government, or public authority or corporate body, to the Commission.

(2) An application shall be made in the prescribed form and shall be accompanied by any prescribed information or other information that the Commission may, in writing require the applicant to supply and the Commission shall not begin the process of creating a wayleave until all prescribed or required information has been submitted to it.

(3) In order to enable a proposed wayleave to be created by the Commission of its own motion to comply with the provisions of this section, the Commission shall complete an application form as if it were applying to create a wayleave and references to "the applicant" in this Sub-part in relation to an application to create a wayleave shall be taken to apply as well to the Commission.

(4) The applicant shall serve a notice on—

(a) all persons occupying land over which the proposed wayleave is to be created, including persons occupying land in accordance with customary pastoral rights;

(b) the county government in whose area of jurisdiction land over which the proposed wayleave is to be created is located;

(c) all persons in actual occupation of land in an urban and per-urban area over which the proposed wayleave is to be created; and

(d) any other interested person.

(5) along the route of the proposed wayleave calculated to bring the application clearly and in a comprehensible manner to the notice of all persons using land over which the proposed wayleave is likely to be created.
Application for communal right of way.

145. (1) A county government, an association, or any group of persons may make an application to the commission for a communal right of way.

Determination on creation of public right of way.

146. (1) The Commission shall—

(a) on receipt of all information prescribed or required under this Act;

(b) after at least ninety days from the date of the serving of notices under section under this Act, consider all the information so received and all representations and objections made by any person served with a notice under the aforesaid subsections and recommend to the Cabinet Secretary whether to—

(i) appoint a public inquiry to give further consideration to the representations and

(ii) refer the application to the County Government for its opinion on whether to approve the application; or

(iii) initiate and facilitate negotiations between those persons who have made representations on the application and the applicant with a view to reaching a consensus on that application.

(2) If the Commission has proposed the creation of a public right of way of its own motion and representations have been made on that proposal which are concerned with the matters other than the compensation payable for the use of the land for that public right of way, the Commission shall recommend to the Cabinet Secretary only that the Cabinet Secretary exercise the powers under subparagraphs (i) or (ii) of subsection (1).
(3) The Cabinet Secretary shall determine whether or not to create to create a public right of way, after taking account, as the case may be, of—

(a) the recommendations of the Commission; or

(b) the advice of the county government;

(c) the outcome of any negotiations initiated under subsection (1)(b)(iii),

(4) The Cabinet Secretary may, by order in the Gazette, create a public right of way under this section subject to any amendments, limitations and conditions, including conditions as to the costs of constructing and maintain a public right of way.

(5) If an agreement has been reached between the parties to any negotiations initiated under subsection (1) (b) (iii) and if the Cabinet Secretary intends to create a public or right of way but not to accept any amendment, limitation or condition of that agreement, the Cabinet Secretary shall refer the matter back to the parties for reconsideration and take no decision on the creation of that right of way until at least thirty days have elapsed from the date of the referral of the matter back to the parties or the parties have resubmitted their agreement, with or without amendments, to the Cabinet Secretary whichever is the shorter period.

(6) The order of the Cabinet Secretary to create a public right of way shall—

(a) delineate the route of that public right of way;

(b) be published in the Gazette;

(c) be notified to a county government having jurisdiction along the route of the public right of way;
(d) be publicized in any manner which is calculated to bring it to the attention of people occupying and using land along the route of the public right of way; and

(e) come into force thirty days after it has been published in the Gazette.

(7) Any person who makes any representation or objection to an application to create a public right of way, within six weeks after the order has been made, may appeal to the Court on a point of law against an order made by the Cabinet Secretary under this section, but apart from such an appeal, an order of the Cabinet Secretary shall not be questioned by way of judicial review or otherwise in any court.

The Commission shall publish the application objections;

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

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

(a) to cause to be recorded, in such forms as may be prescribed, the route of the public right of way on any certificate of occupancy or other document of title held in any office of the land registry having reference to land over which the public right of way has been created; and
(b) to cause to be delivered to the Registrar all certificates of occupancy having reference to land over which the public right of way has been created held by—

(i) persons occupying such land under such right of occupying; or

(ii) by any lender of money secured by a charge or lien who is holding that certificate of occupancy as part of the security for that loan, so as to amend that certificate of occupancy by recording the route of the public right of way on that certificate of occupancy.

Compensation in respect of public right of way.

148. (1) compensation shall be payable to any person for the use of land, of which the person is in lawful or actual occupation, as a communal right of way and, with respect to a wayleave, in addition to any compensation for the use of land for any damage suffered in respect of trees crops and buildings as shall, in cases of private land, be based on the value of the land as determined by a qualified valuer.

(2) Compensation relating to a wayleave or communal right of way shall not be paid to a public body unless there is a demonstrable interference of the use of the land by that public body.

(3) Damage caused as a result of the creation of a wayleave shall include any preliminary work undertaken in connection with surveying or determining the route of that wayleave, and whether the trees, crops or buildings so damaged were included in the route of the wayleave as delineated in the order of the Cabinet Secretary.

(4) The duty to pay compensation payable under this section shall lie with the State Department, county government, public authority or corporate body that applied for the public right of way and that duty shall be complied with promptly.

(5) If the person entitled to compensation under this section and the body under a duty to pay that compensation are unable to agree
on the amount or method of payment of that compensation or if the person entitled to compensation is dissatisfied with the time taken to pay compensation, to make, negotiate or process an offer of compensation, that person may apply to the Court to determine the amount and method of payment of compensation and the Court in making any award may, make any additional costs and inconvenience incurred by the person entitled to compensation.

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

**Power of courts to enforce public rights of way.**

149. In determining any question or dispute concerning the existence or effect of a public right of way, a court may make an order on any condition, which it thinks fit on all or any of the following matters—

(a) the existence of a public right of way;

(b) the enforceability a public right of way by or against any person;

(c) the extent of the use of the easement, analogous right or public right of way and whether that use exceeds what is reasonable or is permitted under the terms of the grant of the easement or the terms of the order creating the analogous right or public right of way;

(d) the question whether any work is required to be done under the terms of an easement, analogous right or public right of way; and, if so, the nature and extent of the work required to be undertaken;

(e) the reasonable and proper cost of any such work as is required to be undertaken;
(f) the person or persons by whom the costs of any such work is to be borne and if the cost is to be shared between two or more persons, the shares to be borne by each such person;

(g) the date by which and the manner in which any such work is to be undertaken;

(h) the entry on to any land, whether or not it is land over which an easement, analogous right or public right of way has been created, for the purpose of doing the work and the use over or on that land of any vehicles, plant, machinery and installations for the purpose of carrying out that work; or

(i) any other matter arising in relation to question or dispute about an easement, analogous right or public right or way.

PART XI—MISCELLANEOUS

Jurisdiction of Environment and Land Court.

150. The Environment and Land Court established in the Environment and Land Court Act is vested with exclusive jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act.

Substituted service.

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

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

(ii) if the land is community land, at the offices of the Community Land Committee or other public place within the village, or

(iii) if the land is public land, at the offices of the county government having jurisdiction in the area where the land is located or other public place in the area where the land is located; and

(b) publishing a copy in the Gazette and if it thinks fit, one or more newspapers circulating in Kenya.

Rights of entry.

152. (1) Any person authorised in that behalf by the Commission shall have power, on the giving of not less than forty eight hours notice, to enter and inspect at all reasonable times between the hours of 6.00 a.m. and 6.00 p.m. any public land, other than land occupied exclusively as a dwelling house, for any purpose connected with the implementation of this Act.

(2) The notice required by subsection (1) to be given prior to any entry on to land shall specify clearly the purpose for which and the time at which the authorised person will enter the land.

(3) Every person authorised to enter or inspect land under this section shall be furnished with a written authorization signed by the Commission and if so required by any person having an interest in or occupying the land to be entered and inspected, shall produce the same to that person.

(4) If any person authorised under this section causes any damage to land or anything on the land during an entry and inspection, the Commission, shall forthwith appoint a person to assess the damage and pay promptly compensation based on that assessment to the person whose land or thing on the land have been
The Land Act, 2012

Land Compensation Fund.

153. (1) There shall be established a Land Compensation Fund, to be known as the Fund.

(2) The objects and purposes of the fund is to provide compensation to any person who, as a result of the implementation of any of the provisions of this Act by the National Government, county government, urban area or city or any public, suffers any loss or deprivation or diminution of any rights or interests in land or any injurious affection in respect of any ownership of land.

(3) The Fund shall be administered in accordance with the provision relating to public Funds under the law relating to public finance management.

Fees.

154. (1) The Cabinet Secretary shall prescribe the rates of fees for all matters in respect of which, by this Act, prescribed fees are required to be paid by any person and shall keep such fees under continuous review.

(2) Fees prescribed under this section shall be at a per centum rate of the value of the land the subject of the application or other matter in respect of which fees are required to be paid.

(3) The Registrar shall refuse to make any entry on the register or register any document in respect of any grant of a land or any disposition of or arising in connection with a land in respect of which a fee has not been paid in whole or in part, unless the Registrar is satisfied on the basis of written evidence that the fee has been waived in whole or in part or that it has been agreed between the payer and payee that the fee may be paid in installments and there are no arrears in those installments.

(4) Unpaid fees or expenses incurred by the Government in
The Land Act, 2012

connection with any attempt to recover those unpaid fees shall constitute civil debt recoverable summarily.

Unlawful occupation of land.

155. (1) Any person who, without, express or implied, lawful authority or without any right or license, under customary or statutory land law so to do—

(a) occupies, or erects any building on any public land;

(b) clears, digs, ploughs, cultivates, or grazes animals over, any public land or part of it; or

(c) cuts or removes any timber or other produce on or from any public land or part of it, shall be taken to be in unlawful occupation of that land.

(2) If, with respect to public land the Commission is of the opinion that a person is in unlawful occupation of public land, the Commission may serve on that person a notice in the prescribed form or give to that person an oral communication, in a language calculated to be understood by that person requiring that person to show cause as to why the person should not be required to vacate that land within any time and subject to any terms and conditions as to the removal of buildings, the reaping of growing crops and any other matters which the justice of the case may require, which may be specified in the notice or oral communication.

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

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

(b) the use which the person is making of the land, including any crops being grown by that person and when they may reasonably be expected to be ready to be harvested;

(c) the length of time that person has been on that land and the person’s age and general circumstances;

(d) whether that person is living with any dependants;

(e) whether that person or any dependants of that person are in employment near to that land;

(f) whether the occupation of the land took place peaceably or by force and whether the occupation is, as a consequence, depriving and person of the lawful occupation and use of that land which that person could take up immediately the land was vacated;

(g) whether the occupation of the land is preventing some necessary or desirable development or public works;

(h) the nature and environment if the land and where the land is land reserved for the primary use of wildlife, whether the occupation of the land is hindering or preventing the use of the land by wildlife or is in practice in harmony with that use;

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

(5) A person served with a notice or oral communication under this section shall, within not more than sixty days, show cause to the Commission as to why the person should not vacate the land to which the notice relates.

(6) If a person does not show cause within sixty days as to why the land should not be vacated, and has no reasonable excuse for not so complying, the person shall be deemed to have accepted the notice and shall be under duty to comply with that notice.

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

(8) A person who responded to the notice to show cause but who failed so to do in terms of subsection (5) may apply to the court for relief against the operation of that notice or oral communication, within thirty days of being notified of the failure has failed to show cause.

(9) An application for relief is not to be taken as an admission by the person applying for relief:

provided that—

(a) the person is in unlawful occupation of the land;

(b) by reason of that unlawful occupation, the Commission has the right to require the person to vacate the land in respect of which the application for relief has been made;
(c) all notices and oral communications which were required to be served by the Commission were properly served; or

(d) the period by which the land must be vacated specified in the notice or oral communication was reasonable or had expired.

(10) The court, may after considering the matters set out in subsection (4), grant relief to the person applying for the same on any terms and conditions that appear to the court to be just and reasonable and, without prejudice to the generality of this provision, the court may—

(a) cancel the notice or oral communication and declare that the person is entitled to remain on the land;

(b) postpone the operation of the notice or oral communication and grant the person a license to remain on the land until the notice or oral communication shall come into operation;

(c) vary the operation of the notice or oral communication by granting the person an Obstruction of public rights of way.

(d) vary any of the terms of the notice or oral communication or the period within which the person is required to vacate the land; or

(e) vary the amount of any payment to be paid, or where no payment has been offered, order that payment as the court shall think just be made to the person on vacating of the land.

(11) If the court has confirmed the notice or oral communication, with or without any variations, alterations or additions in the exercise of its powers under subsection (10), the notice or oral communication,
the person on whom has been served shall be under a duty to comply with that notice or oral communication as confirmed by the court.

**Obstruction of public land rights of way**

156. (1) If the Commission is satisfied that there has been any wrongful obstruction of or encroachment on any public right of way, it may make an order requiring the person responsible for that obstruction or encroachment to remove that obstruction or encroachment within the time specified in the order, which shall be not less than fourteen days, and if that order is not complied with within the time specified, the Commission may take any steps which may be necessary for the purpose.

(2) Any notice made by the Commission under subsection (1) shall be served on or otherwise communicated to the person alleged by the notice to be responsible for the obstruction or encroachment in such a manner as that person will understand that notice and what is required to be done under the notice.

(3) A person served with a notice under subsection (1), may request the Commission to reconsider the notice within the time specified in the notice and on giving reasons.

(4) A person who does not take action under subsection (3) shall be taken to have accepted the notice and shall be under a duty to comply with it.

(5) If the Commission has reconsidered the notice in response to a request made in accordance with subsection (3), and determines to confirm the notice, it shall inform the person who made the request for a reconsideration that it has confirmed the notice.

(6) A person whose request for a reconsideration of the notice has resulted in the notice being confirmed may appeal to a court against that confirmed notice, but if the person does not so appeal within the time specified in the notice for compliance with the notice, the person shall be deemed to have accepted the notice and shall be under a duty to comply with it.
(7) A court hearing an appeal under this section may—

(a) confirm the notice and order the person to desist from obstructing or encroaching on the public right of way;

(b) suspend the operation of the notice for any period which the court shall determine; or

(c) quash the notice,

and may make any ancillary orders which the circumstances of the case may require.

Offences.

157. (1) Any person who—

(a) knowingly makes any false statement, orally or in writing, in connection with any disposition or other transaction affecting land or any other matter arising under this Act;

(b) knowingly gives any false information or makes any false statement, either orally or in writing, in connection with any call for information made under this Act or in connection with any investigation into the commission of any offence under this Act;

(c) fraudulently procures—

(i) the registration or issue of any certificate of ownership, or any other document or instrument relating to the land; or

(ii) the making of any entry or the endorsement of any matter on any document or instrument referred to in subparagraph (i); or

...
(iii) the cancellation or amendment of any of the documents referred to in this paragraph instruments our entries or endorsements; or

(d) fraudulently alters, adds to, erases, defaces, mutilates or destroys any document or instrument relating to land or any entry on or endorsement of any such document or instrument; suppresses or conceals from the Commission, the Registrar, or any authorized officer exercising powers under this Act or assists or joins in so doing, any material document, fact or matter, commits an offence and on conviction is liable to a fine not exceeding ten million shillings or imprisonment for a term not exceeding ten years or to both the fine and imprisonment.

(2) Any person who unlawfully occupies public land commits an offence and upon conviction is liable to a fine not exceeding five hundred thousand shillings, and in the case of a continuing offence to an additional fine not exceeding ten thousand shillings for every day during which the offence shall have continued.

(3) Any person who wrongfully obstructs or encroaches on to a public right of way and who does not within the time specified in any notice served on the person under section 112 or where the person has appealed against the notice, within the time specified in the notice after the hearing of the appeal where the court has rejected that appeal, remove that obstruction or cease that encroachment commits an offence and upon conviction is liable, on conviction to a fine not exceeding ten million shillings and in the case of a continuing offence to an additional fine not exceeding one hundred thousand shilling for every day during which the offence continues.

(4) Any person who wilfully—

(a) delays;

(b) obstructs;
(c) hinders;

(d) intimidates; or

(e) assaults,

any person authorized under this Act to inspect any land in the lawful exercise of the power in that behalf commits an offence and upon conviction is liable to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding three years or to both the fine and imprisonment.

(5) Any person who, being an authorized officer under this Act, whether generally or for a specific function, in the course of any official function or otherwise, unlawfully or with force enters on the land of any person or while on land, willfully commits any damage to the land or anything on the land, whether naturally on the land, or stock owned by any person using the land or crops planted or buildings erected on the land commits an offence and upon conviction is liable, to a fine not exceeding five hundred thousand shillings or to imprisonment not exceeding three months or to both the fine and imprisonment.

(6) If a court has convicted any person of an offence under this section and the commission of that offence enabled that person to obtain or retain or regain any interest in land which the person would otherwise not have been able to obtain, retain or regain, the court may in addition to any punishment provided for by this section imposed on such person, make any such order in relation to that interest in land so obtained, retained or regained by such person as appears to the court necessary to ensure that such person does not profit by the offence of which the person has been convicted and without prejudice to the generality of this provision, any such order may—

(a) direct the Commission to commence proceedings to—

(i) revoke the allocation; or

(ii) terminate a lease;
(b) direct the Registrar to cancel any entry in any register which has been obtained by virtue or on account of the offence;

(c) require that person to make restitution to any person who has suffered loss by virtue or on account of the offence, including taking all necessary action to transfer to any such person any interest in land obtained, retained or regained by such offence from that person, and any such order may be made subject to any conditions which the court.

(7) The Registrar shall not be personally liable in respect of this Act and within the scope of official capacity, if the Registrar did that act in the honest belief that the Registrar was entitled to do it.

Corrupt transactions.

158. (1) Nothing in this Act shall be taken or construed to validate, affirm, authenticate or give any legal effect to-

(a) any grant of public land;

(b) any issue of a certificate of ownership of land; or

(c) any disposition, or any contract for any of the earlier mentioned transactions which was obtained or induced by corruption, on the part of any government official, county government official or employee of the Commission whether or not that government official, county government official or employee of the Commission was directly involved in that transaction.

(2) Notwithstanding the provisions of any other written law, a transaction under subsection (1) shall be illegal from its inception and shall be void and of no legal effect.

(3) For purposes of this section, a transaction shall be
considered to be affected or tainted by corruption when either—

(a) any party to or involved directly or indirectly in the transaction in respect of which it is alleged that an action was corrupt is convicted of corruption and all final appeals arising from that conviction have been concluded; or

(b) any employee of the Commission or other public official is interdicted, or is retired in the public interest, from the position on the grounds that the person has been engaged in corrupt actions and that these actions involved that transaction; or

(c) a court of competent jurisdiction so determines.

(4) Any person occupying land obtained as a consequence of participating in any of the transactions under subsections (1) and (3) shall be liable to forfeit that land to the government without any entitlement to any compensation.

(5) Notwithstanding that a transaction covered by this section is void, a person occupying land as a consequence of that transaction shall be obliged to comply with all the terms and conditions of the transaction as if it had been a valid transaction and shall be liable to all the remedies which may be applied to a person who fails to comply with the terms and conditions of a valid transaction in addition to any penalties which may be applied under this section.

Land sizes.

159.(1) Within one year of the coming into force of this Act, the Cabinet Secretary shall commission a scientific study to determine the economic viability of minimum and maximum acreages in respect of private land for various land zones in the country.

(2) The findings of the study shall be available for the public to make observations and shall be modified based on valid
representations in accordance with principles of participation of the people, good governance, transparency and accountability.

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

(4) The Cabinet Secretary shall prescribe the rules and regulations for determining the minimum and maximum acreages in respect of private land solely based on the recommendations in the report.

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

General power to make regulations.

160. (1) The Commission or the Cabinet Secretary, where applicable, make regulations prescribing anything which may be prescribed under this Act and generally for the better carrying into effect of the purposes and provisions of this Act and without prejudice to the generality of the foregoing, such regulations may prescribe —

(a) the forms to be used in connection with this Act;

(b) the management of the Land Compensation Fund;

(c) the use and management of public rights of way created under this Act;

(d) procedures to be followed with respect to the making of any claim for compensation and the payment of any compensation under this Act;

(e) the manner of assessing value of an interest in land; or
(f) the minimum and maximum land holding acreages in respect of private land.

(2) Without prejudice to the foregoing, the Commission shall have the powers to make regulations—

a) to secure the land rights of the minority communities to individually or collectively access and use land and land based resources following an inventory of the existing minority communities to obtain a clear assessment of their status and land rights;

(b) to prevent and manage land based disasters and to provide for settlement in the event of natural disasters;

(c) to establish, plan and manage refugee camps;

(d) to deal with issues that arise from internal displacement of persons and provide for the settlement of the internally displaced persons; and

(e) with respect to squatters—

   (i) to establish appropriate mechanisms for their removal from unsuitable land and their settlement;

   (ii) to facilitate negotiation between private owners and squatters in cases of squatter settlements found on private land;

   (iii) to transfer unutilized land and land belonging to absentee land owners to squatters; and

   (iv) to facilitate the regularization of existing squatter settlements found on public and community land for purposes of upgrading or development.
Repeals.

161. (1) The written laws set out in the Schedule to this Act are hereby repealed.

(2) All other law relating to land shall be construed with the alterations, adaptations, qualifications and exceptions necessary to give effect to this Act.

Savings and transitional provisions with respect to rights, actions, dispositions etc

162. (1) Unless the contrary is specifically provided in this Act, any right, interest, title, power, or obligation acquired, accrued, established, coming into force or exercisable before the commencement of this Act shall continue to be governed by the law applicable to it immediately prior to the commencement of this Act.

(2) Unless the contrary is specifically provided in this Act or the circumstances are such that the contrary must be presumed, if any step has been taken to create, acquire, assign, transfer, or otherwise execute a disposition, any such transaction shall be continued in accordance with the law applicable to it immediately prior to the commencement of this Act.

(3) Any instrument executed before the commencement of this Act whereby any disposition permitted under this Act is completed may be presented for registration in the prescribed register and—

(a) the question whether any instrument so presented is to be registered shall be determined by the Registrar by reference to the law in force at the time of its execution; and

(b) Subject to the provisions of paragraph (a), the provisions of this Act shall apply to that instrument as if it had been executed after the commencement of this Act.

(4) If a lessor or lender had initiated any steps to forfeit a lease or
to foreclose a charge, as the case may be, before the commencement of this Act, a court may on the application of the lessee or the chargor issue an injunction to the lessor or, to the lender to stop the continuation of any such step.

(5) If a court had issued an injunction under subsection (4), the lessor or lender to whom the injunction has been issued may commence any action under this Act to terminate that lease or bring that charge to an end.

Amendment of Cap. 318

163. Section 168 of the Agriculture Act, Cap.318 is amended by-

(a) deleting paragraph (d) of sub-section (1) ; and

(b) deleting paragraph (e) of sub-section (2).

SCHEDULE  

REPEALED LAWS

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The Land Acquisition Act, Cap. 295
The Land Registration Act, 2012
THE LAND REGISTRATION ACT, 2012

No. 3 of 2012

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SCHEDULE—REPEALED LAWS
THE LAND REGISTRATION ACT, 2012

No. 3 of 2012

Date of Assent: 27th April, 2012
Commencement: 2nd May, 2012

AN ACT of Parliament to revise, consolidate and rationalize the registration of titles to land, to give effect to the principles and objects of devolved government in land registration, and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

Short title.  
1. This Act may be cited as the Land Registration Act, 2012.

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

- "adjudication officer" has the meaning assigned to it in the Land Adjudication Act, Cap. 284;

- "adjudication register" has the meaning assigned to it in the Land Adjudication Act;

- "assignee" means a person to whom an assignment has been made;

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

- "building" means a structure or erection of any kind, whether
permanent or temporary, movable or immovable and whether completed or not;

"Cabinet Secretary" means the Cabinet Secretary responsible for matters relating to land;

"cadastral map" means a map or series of maps referred to under section 15;

"caution" means—

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

(b) a caveat.

"certificate of lease" means a certificate of lease in the prescribed form issued under section 30;

"certificate of title" means a certificate of title in the prescribed form issued under section 30;

"charge" means—

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

(b) a sub-charge; and

(c) the instrument creating a mortgage or other charge;

"Commission" means the National Land Commission established by Article 67 of the Constitution;

"community" means a clearly defined group of users of land identified on the basis of ethnicity, culture or similar community of interest as provided under Article 63(1) of the Constitution, which
holds a set of clearly defined rights and obligations over land and land-based resources;

-“corporate body” means a body incorporated under any written law and includes a company, association or body of persons;

-“co-tenancy” has the meaning ascribed to it by section 91;

-“Court” means the Environment and Land Court established under the Environment and Land Court Act, 2011, No. 19 of 2011;

-“dealing” includes disposition and transmission;

-“deliver” includes to transmit by post, hand, email, fax or other prescribed medium;

-“disposition” means—

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

(b) an agreement to undertake any such disposition;

-“dwelling house” means a house, part of a house or room used as a separate dwelling in any building and includes a garden or other premises within the cartilage of and used as a part of any such dwelling house;

-“easement” has the meaning ascribed to it by the Land Act;

-“effective date” means the commencement date of this Act;

-“file” means place in the relative parcel file;

-“Gazette” means Kenya Gazette and County Gazette;
geo-reference” means the reference of an object using a specific location either on, above or below the earth’s surface;

“head lease” means a lease in respect of which a sublease is entered into;

“inhibition” means an order made under section 70, or a prohibition;

“instrument” means—

(a) any writing, including an enactment that creates or affects legal or equitable rights or liabilities;

(b) any covenant or condition expressed in an instrument or implied in an instrument under this or any other enactment relating to land; or

(c) any variation of an instrument, except where otherwise provided;

“interest” means a right in or over land;

“land” has the meaning assigned to it under Article 260 of the Constitution;

“land administration” means the process of determining, recording, updating and disseminating information about the ownership, value and use of land;

“land register” means the land register compiled under section 7;

“lease” means—

(a) a lease or sublease, whether registered or unregistered of land; or

(b) a short-term lease or agreement to lease;
"legal incapacity" means a person of unsound mind or a person under the age of eighteen years;

"lender" means a person to whom a charge has been given as security for the repayment of an advance of money or money's worth or to secure a condition;

"lessee" means a person to whom a lease is granted or a person who has accepted a transfer or assignment of a lease;

"lessor" means a person by whom a lease is granted and includes a person who has accepted the transfer or assignment of the reversion of a lease;

"licensee" means the person occupying land in accordance with the terms of a license;

"licensor" means the person granting or giving a licence;

"lien" means the holding by a lender of any document of title relating to land or a lease as security for an advance of money or money's worth or the fulfillment of a condition;

"parcel" means an area of land separately delineated on the cadastral map;

"parcel register" means the folio of the land register kept in respect of a parcel of land or a registered lease;

"partition" means the separation, by legal instrument, of the share in land or a lease held by owners in common so that each owner takes their share free of the rights of the others;

"periodic lease" means a lease from year to year, half year to half year, quarter to quarter, month to month, week to week or the like;

"private land" has the meaning assigned to it under Article 64 of the Constitution;
“proprietor” means—

(a) in relation to land or a lease, the person named in the register as the proprietor; and

(b) in relation to a charge of land or a lease, the person named in the register of the land or lease as the person in whose favour the charge is made;

“public land” has the meaning assigned to it under Article 62 of the Constitution and includes the coast foreshore, rivers, dam, lake reserves and other reserves as provided under the Survey Act, Cap. 299 or any other written law;

“register” means land register and community land register;

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

“registration unit” means a land registration unit constituted under section 6 (1);

“registration section” means a division of a registration unit established under section 6 (2);

“registry” means land registry established under section 7;

“restriction” means an interest registered under section 76 and includes the Registrar’s caveat;

“restrictive agreement” means—

(a) a restrictive covenant; or

(b) an agreement by an owner of land restricting the building on, use or other enjoyment of that land for the benefit of the owner of the land or neighboring parcel of land;
-surveyor" means a surveyor as defined in the Survey Act, Cap. 299;

"transfer" means—

(a) the passing of land, a lease or a charge from one party to another by an act of the parties and not by operation of the law; or

(b) the instrument by which any such passing is effected;

"transferee" means a person who receives land, a lease or charge passed through a transfer;

"transferor" means the person who passes land, a lease or charge through a transfer;

"transmission" means the passing of land, a lease or a charge from one person to another by operation of law on death, insolvency or otherwise;

"trustee" includes personal representative;

"valuable consideration" includes marriage, but does not include a nominal consideration;

"valuer" means a valuer registered and licensed to practice as a valuer in accordance with the Valuers Act;

"unexhausted improvement" means—

(a) anything or any quality permanently attached to the land directly resulting from the expenditure of capital or labour and increasing the productive capacity, the utility, the sustainability of its environmental quality; or

(b) trees, standing crops or growing produce whether of an agricultural or horticultural nature.
Application.

3. Subject to section 4, this Act shall apply to—

(a) registration of interests in all public land as declared by Article 62 of the Constitution;

(b) registration of interests in all private land as declared by Article 64 of the Constitution; and

(c) registration and recording of community interests in land.

Limitation of application.

4. This Act shall not prohibit or otherwise affect the system of registration under any law relating to mining, petroleum, geo-thermal energy or any other rights over land and land-based resources in respect of public land.

Conflict with other laws.

5. Except as otherwise provided in this Act, no other written law, practice or procedure relating to land shall apply to land registered or deemed to be registered under this Act so far as it is inconsistent with this Act.

PART II—ORGANISATION AND ADMINISTRATION

Land Register, Land Registries and Offices

Registration units.

6. (1) For the purposes of this Act, the Commission in consultation with national and county governments may, by order in the Gazette, constitute an area or areas of land to be a land registration unit and may at any time vary the limits of any such units.

(2) Every registration unit shall be divided into registration sections, which shall be identified by distinctive names, and may be further divided into blocks, which shall be given distinctive numbers or letters or combinations of numbers and letters.
(3) The parcels in each registration section or block shall be
numbered consecutively, and the name of the registration section and
the number and letter of the block, if any, and the number of the
parcel shall together be a sufficient reference to any parcel.

(4) The office or authority responsible for land survey may, at
any time, cause registration sections or blocks to be combined or
divided, or cause their boundaries to be varied, and immediately
inform the Registrar of the changes.

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

(6) The land registration units shall be established at county level
and at such other levels to ensure reasonable access to land
administration and registration services.

Land registry.

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

(a) a land register, in the form to be determined by the
Commission;

(b) the cadastral map;

(c) parcel files containing the instruments and documents that
support subsisting entries in the land register.

(d) any plans which shall, after a date appointed by the
Commission, be geo-referenced;

(e) the presentation book, in which shall be kept a record of all
applications numbered consecutively in the order in which
they are presented to the registry;

(f) an index, in alphabetical order, of the names of the proprietors; and
(g) a register and a file of powers of attorney.

(2) The Registrar shall, upon payment of the prescribed fee, make information in the land registry accessible to any person.

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

Community Land Register.

8. (1) Subject to the legislation on community land made pursuant to Article 63 of the Constitution, there shall be maintained in each registration unit, a community land register in which shall be kept—

(a) a cadastral map showing the extent of the community land and identified areas of common interest;

(b) the name of the community identified in accordance with Article 63(1) of the Constitution and any other law relating to community land;

(c) a register of members of the community;

(d) the user of the land;

(e) the identity of those members registered as group representatives;

(f) the names and identity of the members of the group; and

(g) any other requirement as shall be required under the law relating to community land.

(2) The Registrar shall issue a certificate of title or certificate of lease in the prescribed form.

(3) The Registrar shall not register any instrument purporting to dispose of rights or interest in community land except in accordance
with the law relating to community land.

(4) For the avoidance of doubt the provisions in this section shall not apply to unregistered community land held in trust by county governments on behalf of communities under Article 63(3) of the Constitution.

**Maintenance of documents.**

9. (1) The Registrar shall maintain the register and any document required to be kept under this Act in a secure, accessible and reliable format including—

(a) publications, or any matter written, expressed, or inscribed on any substance by means of letters, figures or marks, or by more than one of those means, that may be used for the purpose of recording that matter;

(b) electronic files; and

(c) an integrated land resource register.

(2) The register shall contain the following particulars—

(a) name, personal identification number, national identity card number, and address of the proprietor;

(b) in the case of a body corporate, name, postal and physical address, certified copy of certificate of incorporation, personal identification numbers and passport size photographs of persons authorized and where necessary attesting the affixing of the common seal;

(c) names and addresses of the previous proprietors;

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

(e) any other particulars as the Registrar may, from time to time, determine.
Public access to the register.

10. Subject to the Constitution and any other law regarding freedom of and access to information, the Registrar shall make information in the register accessible to the public by electronic means or any other means as the Chief Land Registrar may reasonably prescribe.

Seal of Registry.

11. Each registry shall have an official seal, and every instrument bearing the imprint of the seal shall be received in evidence and, unless the contrary is proved, shall be deemed without further proof to be issued by or under the direction of the Registrar.

Appointment of officers.

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

(2) Any officer appointed under this Act shall be competitively recruited and vetted by the Public Service Commission.

Qualifications for appointment of Registrar.

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

(a) is a citizen of Kenya;

(b) holds a degree from a university recognized in Kenya;

(c) is an advocate of the High Court of Kenya of not less than ten years standing;

(d) has had at least ten years experience in land administration or management; and

(e) meets the requirements of chapter six of the Constitution.
(2) A person shall not be qualified for appointment if that person—

(a) has been convicted of a felony;
(b) is an undischarged bankrupt;
(c) has not met his or her legal obligations in relation to tax;
(d) has benefited from or facilitated an unlawful and irregular allocation or acquisition of land or other public property; or
(e) has been removed from office for contravening the provisions of the Constitution.

**General powers of Land Registrars.**

14. The Chief Land Registrar, County Land Registrars or any other land registrars may, in addition to the powers conferred on the office of the Registrar by this Act—

(a) require any person to produce any instrument, certificate or other document or plan relating to the land, lease or charge in question, and that person shall produce the same;

(b) summon any person to appear and give any information or explanation in respect to land, a lease, charge, instrument, certificate, document or plan relating to the land, lease or charge in question, and that person shall appear and give the information or explanation;

(c) refuse to proceed with any registration if any instrument, certificate or other document, plan, information or explanation required to be produced or given is withheld or any act required to be performed under this Act is not performed;

(d) cause oaths to be administered or declarations taken and may require that any proceedings, information or explanation affecting registration shall be verified on oath or by statutory declaration; and
(e) order that the costs, charges and expenses as prescribed under this Act, incurred by the office or by any person in connection with any investigation or hearing held by the Registrar for the purposes of this Act shall be borne and paid by such persons and in such proportions as the Registrar may think fit.

Cadastral map.

15. (1) The office or authority responsible for the survey of land shall prepare and thereafter maintain a map or series of maps, to be known as the cadastral map, for every registration unit.

(2) The parcel boundaries on such maps shall be georeferenced and surveyed to such standards as to ensure compatibility with other documents required under this Act or any other law.

Power to alter boundary lines and to prepare new editions.

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

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

(3) The office or authority responsible for the survey of land may prepare new editions of the cadastral map or any part thereof, and may omit from the new map any matter that it considers obsolete.

Approval for further surveys.

17. (1) Further surveys may be made for any purpose connected with this Act, but such surveys shall be used to amend the cadastral map only if it is approved by the office or authority responsible for the
survey of land.

(2) This section shall not preclude the Registrar from keeping in the registry records of cadastral information and maps approved by the office or authority responsible for survey.

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

Boundaries.

18. (1) Except where, in accordance with section 20, it is noted in the register that the boundaries of a parcel have been fixed, the cadastral map and any filed plan shall be deemed to indicate the approximate boundaries and the approximate situation only of the parcel.

(2) The court shall not entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this section.

(3) Except where, it is noted in the register that the boundaries of a parcel have been fixed, the Registrar may, in any proceedings concerning the parcel, receive such evidence as to its boundaries and situation as may be necessary:

Provided that where all the boundaries are defined under section 19 (3), the determination of the position of any uncertain boundary shall be done as stipulated in the Survey Act, Cap. 299.

Fixed boundaries.

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

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

(3) Where the dimensions and boundaries of a parcel are defined by reference to a plan verified by the office or authority responsible for the survey of land, a note shall be made in the register, and the parcel shall be deemed to have had its boundaries fixed under this section.

**Maintenance of boundaries.**

**20.** (1) Every proprietor of land shall maintain in good order the fences, hedges, stones, pillars, beacons, walls and other features that demarcate the boundaries, pursuant to the requirements of any written law.

(2) The Registrar may in writing, order the demarcation within a specified time of any boundary mark, and any person who fails to comply with such an order commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings.

(3) The Registrar may in writing, order which of adjoining proprietors shall be responsible for the care and maintenance of any feature demarcating a common boundary, and any proprietor so ordered to be responsible for the care and maintenance of the boundary feature who allows the boundary feature or any part of it to fall into disrepair, be destroyed or removed commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings.

**Interference with boundary features.**

**21.** (1) Any person who defaces, removes, injures or otherwise impairs a boundary feature or any part of it unless authorized to do so
by the Registrar commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding two hundred thousand shillings or to both.

(2) Any person convicted of an offence under subsection (1), whether or not any penalty is imposed upon the person, is liable to pay the cost of restoring the boundary feature, and the cost shall be recoverable as a civil debt by any person who is responsible under this section for the maintenance of the feature.

Combinations and subdivisions.

22. (1) Subject to authentication of the cadastral map, if contiguous parcels are owned by the same proprietor and are subject in all respects to the same rights and obligations, the Registrar, on application by the proprietor, may combine these parcels by closing the registers relating to them and opening a new register or registers in respect of the parcel or parcels resulting from the combination.

(2) Upon the application of a proprietor of a parcel for the division of that parcel into two or more parcels, and authentication of the cadastral map, the Registrar shall effect the division by closing the register relating to the parcel and opening new registers in respect of the new parcels resulting from the division, and recording in the new registers all subsisting entries appearing in the closed register:

Provided that nothing shall be done under this section that would be inconsistent with the provisions of this Act or any other written law.

Reparcellation.

23. (1) Subject to section 15 and authentication of the cadastral map, on the application of the proprietors of contiguous parcels who are desirous of changing the layout of their parcels, and with the consent in writing of all other persons in whose names any right or interest in the parcels is registered and of any cautioner, the Registrar may—
(a) cancel the registers relating to those parcels and prepare new registers in accordance with the new edition of the cadastral map; or

(b) refuse to effect the reparation if the Registrar considers that the proposed reparation involves substantial changes of ownership, which should be effected by transfers without invoking this section, in which case, the Registrar shall direct the proprietors accordingly.

(2) Upon reparation, the new parcels shall vest in the persons in whose names they are registered.

Effect of Registration

Interest conferred by registration.

24. Subject to this Act—

(a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and

(b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.

Rights of a proprietor.

25. (1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—
(a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and

(b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.

(2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.

Certificate of title to be held as conclusive evidence of proprietorship.

26. (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or

(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

(2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.

Transfer without valuable consideration.

27. (1) A proprietor who has acquired land, a lease or a charge by transfer without valuable consideration shall hold it subject to—

(a) any unregistered rights or interests subject to which the transferor held it;
(b) the law relating to Bankruptcy; and

(c) the winding-up provisions of the Companies Act, Cap. 486.

(2) Notwithstanding subsection (1), the transfer when registered, shall have the same effect as a transfer for valuable consideration.

Overriding interests.

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

(a) spousal rights over matrimonial property;

(b) trusts including customary trusts;

(c) rights of way, rights of water and profits subsisting at the time of first registration under this Act;

(d) natural rights of light, air, water and support;

(e) rights of compulsory acquisition, resumption, entry, search and user conferred by any other written law;

(f) leases or agreements for leases for a term not exceeding two years, periodic tenancies and indeterminate tenancies;

(g) charges for unpaid rates and other funds which, without reference to registration under this Act, are expressly declared by any written law to be a charge upon land;

(h) rights acquired or in process of being acquired by virtue of any written law relating to the limitation of actions or by prescription;

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

Actual notice.

29. Every proprietor, at the time of acquiring any land, lease or charge, shall be deemed to have had notice of every entry in the register relating to the land, lease or charge and subsisting at the time of acquisition.

Certificates of Title, Certificates of Lease and Searches

Certificate of title and Certificate of lease.

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

(2) Notwithstanding subsection (1)—

(a) only one certificate of title or certificate of lease shall be issued in respect of each parcel or lease; and

(b) no certificate of title or certificate of lease shall be issued unless the lease is for a certain period exceeding twenty-five years.

(3) A certificate of title or certificate of lease shall be prima facie evidence of the matters shown in the certificate, and the land or lease shall be subject to all entries in the register.

(4) If there is more than one proprietor, unless they are tenants in common, the proprietors shall agree among themselves on which of them shall receive the certificate of title or the certificate of lease, and if they fail to agree, the certificate of title or the certificate of lease shall be filed in the registry.

(4) The date of issue of a certificate of title or certificate of lease
shall be noted in the register.

Production of certificate.

31. (1) If a certificate of title or a certificate of lease has been issued, then, unless it is filed in the registry or the Registrar dispenses with its production, it shall be produced on the registration of any dealing with the land or lease to which it relates, and, if the certificate of title or the certificate of lease shows all subsisting entries in the register, a note of the registration shall be made on the certificate of title or the certificate of lease.

(2) Where the disposition is a transfer, the certificate shall, when produced, be cancelled, and in that case a new certificate may be issued to the new proprietor.

(3) Where the disposition is a charge, the certificate shall be delivered to the chargee.

Dispositions of leases and charges.

32. On the registration of any disposition of a lease or charge, the original and the duplicate of the lease or charge shall, unless the Registrar is satisfied that they cannot be produced, be produced to the Registrar, who shall note particulars of the disposition on the lease or charge and on the duplicate.

Lost or destroyed certificates and registers

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

(2) The Registrar shall require a statutory declaration to be made by all the registered proprietors, and in the case of a company, the director, where property has been charged, the chargee that the certificate of title or a certificate of lease has been lost or destroyed.

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

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

(5) The Registrar shall have powers to reconstruct any lost or destroyed land register after making such enquiries as may be necessary and after giving due notice of sixty days in the Gazette.

**Searches and copies.**

34. A person who requires an official search in respect of any parcel, shall be entitled to receive particulars of the subsisting entries in the register, certified copies of any document, the cadastral map, or plan filed in the registry upon payment of the prescribed fee.

**Evidence.**

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

(2) Every copy of or extract from a document certified by the Registrar to be a true copy or extract shall, in all proceedings, be received as prima facie evidence of the contents of the document.

(3) Every entry or note in or on any register, cadastral map or filed plan shall be received in all proceedings as conclusive evidence of the matter or transaction that it records.

(4) No process for compelling the production of the register, or of the cadastral map, or of any filed instrument or plan, shall issue from any court except with the leave of that court, which leave shall not be granted if a certified copy or extract will suffice, and any such process, if issued, shall bear thereon a statement that it is issued with the leave
of the court.

**PART III—DISPOSITION AFFECTING LAND**

**Dispositions and dealings affecting land.**

36. (1) A lease, charge or interest in land shall not be disposed of or dealt with except in accordance with this Act, and any attempt to dispose of any lease, charge or interest in land otherwise than in accordance with this Act or any other law, shall not, extinguish, transfer, vary or affect any right or interest in that land, or in the land, lease or charge.

(2) Nothing in this section shall be construed as preventing any unregistered instrument from operating as a contract.

(3) The Cabinet Secretary may prescribe terms and conditions of sale, which—

(a) shall apply to contracts by correspondence, subject to any modification or any stipulation or any intention to the contrary expressed in the correspondence; and

(b) may be made to apply to any other cases for which the terms and conditions are made available, where express reference is made to those terms and conditions.

(4) Subject to Article 67(2)(c) of the Constitution, the Cabinet Secretary shall make regulations prescribing the time within which instruments presented for registration must be registered and providing for the supervision of the registration process to achieve the objectives of efficiency, transparency and good governance.

**Transfers.**

37. (1) A proprietor may transfer land, a lease or a charge to any person with or without consideration, by an instrument in the prescribed form or in such other form as the Registrar may in any particular case approve.
(2) A transfer shall be completed by—

(a) filing the instrument; and

(b) registration of the transferee as proprietor of the land, lease or charge.

Certificates of payment of rates.

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

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

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

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

Certificates as to payment of rent.

39. (1) The Registrar shall not register an instrument purporting to transfer or create an interest in land, unless a certificate is produced with the instrument, certifying that no rent is owing to the national or county governments in respect of the land.

(2) The Registrar shall not register an instrument effecting a transaction unless satisfied that any consent required to be obtained in respect of the transaction has been given by the relevant County Land Management Board on the use of the land, or that no consent is required.
Transfer to take effect immediately.

40. A transfer shall not be expressed to take effect on the happening of any event or on the fulfillment of any condition or at any future time.

Conditions repugnant to interest transferred.

41. (1) A condition or limitation is void if it purports to—

(a) restrain absolutely a transferee or any other person from disposing of the interest transferred; or

(b) determine the interest of the transferee on the happening of any future event or on the failure of any future event to happen.

(2) Except as otherwise provided in this Act, no transfer of land shall contain a direction that the land shall be used or enjoyed by the transferee in a particular manner.

(3) This section does not apply to Wakfs.

Transfer of part.

42. No part of the land comprised in a register shall be transferred unless the proprietor has first subdivided the land and duly registered each new subdivision.

Instruments of dispositions.

43. (1) Every instrument effecting a disposition of land under this Act shall be in the form prescribed in relation to that disposition under this Act or any other written law.

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

(3) The provisions of subsection (2), shall not apply to any
disposition that is exempt from registration.

(4) This section shall not apply to or affect the operation of any contract for a disposition under this Act.

**Executions of instruments in writing.**

44. (1) Except as otherwise provided in this Act, every instrument effecting any disposition under this Act shall be executed by each of the parties consenting to it, in accordance with the provisions of this section.

(2) The execution of any instrument referred to in subsection (1), by a person shall consist of appending a person’s signature on it or affixing the thumbprint or other mark as evidence of personal acceptance of that instrument.

(3) The execution of any instrument referred to in subsection (1) by a corporate body, association, co-operative society or any other organization shall be effected in the presence of either an advocate of the High Court of Kenya, a magistrate, a Judge or a notary public.

(4) An instrument executed out of Kenya shall not be registered unless it has endorsed on it or attached to it a certificate in the prescribed form completed—

(a) if the instrument was executed in the Commonwealth, by a judge, magistrate, notary public, commissioner for oaths; or

(b) if the instrument was executed in a foreign country outside the Commonwealth, by any other person or class of persons as the Cabinet Secretary may prescribe.

(5) The transferee shall in addition to executing the instrument, attach the following—

(a) a copy of an identity card or passport; and

(b) a copy of a Personal Identification Number certificate;
(c) passport-size photographs;

(d) where applicable, a marriage certificate; or

(e) such other identification documents as the Cabinet Secretary may prescribe.

Verification of execution.

45. (1) Subject to subsection (3), a person executing an instrument shall—

(a) appear before the Registrar, public officer or other person as is prescribed; and

(b) be accompanied by a credible witness for the purpose of establishing identity, unless the person is known to the Registrar, public officer or other person.

(2) The Registrar, public officer or other person shall identify the person and ascertain whether the person freely and voluntarily executed the instrument, and shall complete thereon a certificate to that effect.

(3) The Registrar may dispense with verification under this section—

(a) if the Registrar considers that it cannot be obtained or it can only be obtained only with difficulty and is otherwise satisfied that the document has been properly executed; or

(b) if the Registrar knows the document has been properly executed, and shall record on the document the reasons for dispensing with the appearance of the parties.

Stamping.

46. An instrument required by law to be stamped shall not be accepted for registration unless it is stamped in accordance with the Stamp Duty Act, Cap. 480.
Minors.

47. (1) The name of a person under the age of eighteen years may be entered in the register to enable the minor’s interest to be held in trust and shall be registered under the name of the guardian either on first registration or as a transferee or on transmission.

(2) Nothing in this section enables a person under eighteen years of age to deal with land or any interest in land by virtue of such registration, and, if the Registrar knows a child has been registered, the Registrar shall enter a restriction accordingly.

(3) If a disposition by a minor whose minority has not been disclosed to the Registrar has been registered, that disposition may not be set aside only on the grounds of minority.

Agents and persons under disability.

48. (1) Except as provided in subsection (3), no instrument executed by any person as agent for any other person shall be accepted by the Registrar unless the person executing it was authorized in that behalf by a power of attorney executed and verified in accordance with section 45.

(2) The original of a power of attorney or, with the consent of the Registrar, a copy certified by the Registrar shall be filed.

(3) The guardian of a person under a legal incapacity or, if there is no such guardian, a person appointed under some written law to represent that person, may make an application, do any act and be party to any proceeding on behalf of that person, and may generally represent that person for the purposes of this Act.

(4) Before accepting a document executed by a guardian or other person so appointed to represent a person under a legal incapacity, the Registrar shall—

(a) be satisfied that the person claiming to be the guardian is entitled to execute the document; or
(b) require the production of the appointing instrument of the person, and shall file a note of the explanation to that effect.

**Gift to person under incapacity.**

49. A person with a legal incapacity who has been registered as a proprietor of land, a lease or a charge acquired by way of gift may, repudiate the gift within six months after the person ceases to be under a legal incapacity, if the person has not already disposed of the subject-matter, but no such repudiation shall be effective until—

(a) the person has transferred the land, lease or charge to the donor, who is bound to accept it; and

(b) the transfer has been registered.

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**Dispositions Prejudicial to the Creditor**

**Court orders on prejudicial dispositions.**

50. The court may order that any interest in private land acquired or received under or through certain prejudicial dispositions of those interests in private land made by a debtor, or the value of those interests in land, be restored for the benefit of unsecured creditors and the order made under this section shall not increase or prejudice the value of any security held by a creditor over the interest in land of the debtor.

**Prejudicial dispositions.**

51. (1) A disposition under this Act shall be deemed to prejudice a creditor if—

(a) the person making the disposition is unable to pay all their debts without recourse to that private land or any interest in it; and

(b) the disposition hinders, delays or defeats or is intended to hinder, delay or defeat the exercise by a creditor of any right of recourse to land or any interest in land in respect of which that disposition has been made in order to satisfy in whole or
in part any debt owed to the creditor by the person making the disposition, subject to subsection (2).

(2) A disposition shall not be deemed to prejudice a creditor if it is made with the intention of preferring one creditor over another.

Dispositions to prejudice creditors may be set aside.

52. (1) A creditor, public officer, national or county government or public entity charged with the responsibility for collection of money owing by any person to the national or county government or any part of may apply to the court under this section for an order of the court to set aside a prejudicial disposition.

(2) An application made under this section shall—

(a) specify the land to which it relates;

(b) specify the disposition alleged to be prejudicial;

(c) be served on—

(i) the person who has made the disposition;

(ii) the person in whose favour the disposition has been made;

(iii) any other person involved in the disposition from whom compensation is sought.

(3) Subject to section 53, on being satisfied that an applicant has been prejudiced by a disposition to which this Part applies the court may order—

(a) any person who acquired or received land under that disposition or through a person who acquired or received land under such a disposition—

(i) to pay any amount of compensation within any time to the applicant which the court shall specify;
(ii) to re-assign a land or a derivative right to the person who has made the prejudicial disposition; or

(ii) to deal with the land so held only in accordance with any orders that the court may issue.

Protection of person receiving land.

53. (1) If a person acquires or receives land in respect of which the court could make an order for restoration or for the payment of reasonable compensation, the court shall not make that order against that person if that person proves that the land was—

(a) acquired or received in good faith and without knowledge of the fact that it has been the subject of a disposition to which this part applies, or

(b) acquired or received through a person who acquired or received it in the circumstances set out in paragraph (a).

(2) Reference to knowledge in this section shall include actual, constructive and imputed knowledge.

PART IV—LEASES

Registration of Leases.

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

(2) The Registrar, upon receipt of adequate proof, may dispense with the consent of the lessor—

(a) where satisfactory evidence is given to the registrar and the Registrar is satisfied that the lessor is dead and that there is no personal representative of the lessor; or

(b) if the Registrar considers that the consent of the lessor or the personal representative, as the case may be, cannot be obtained or that it can only be obtained with difficulty or at an unreasonable expense and shall, after making such enquiries as the Registrar may consider necessary in the circumstances, record on the document his or her reasons for dispensing with the consent and note as such in the register.

(3) The registration of interests in land under the law relating to sectional properties shall be carried out in the manner prescribed under that Act.

(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.

(5) The Registrar shall register long-term leases and issue certificates of lease over apartments, flats, maisonettes, townhouses or offices having the effect of conferring ownership, if the property comprised is properly geo-referenced and approved by the statutory body responsible for the survey of land.

**Lessor’s consent to dealing with leases.**

55. If a lease contains a condition, express or implied, by the lessee that the lessee shall not transfer, sub-let, charge or charge or part with the possession of the land leased or any part of it without the written consent of the lessor, and the dealings with the lease shall not be registered unless—
(a) the consent of the lessor has been produced to, and authenticated to the satisfaction of the Registrar and the Registrar shall not register any instrument purporting to transfer or create any interest in that land, and

(b) a land rent clearance certificate and the consent to the lease, certifying that no rent is owing to the Commission in respect of the land, or that the land is freehold, has been produced to the Registrar.

**PART V—CHARGES**

**Form and effect of Charges.**

56. (1) A proprietor may by an instrument, in the prescribed form, charge any land or lease to secure the payment of an existing, future or a contingent debt, other money or money’s worth, or the fulfillment of a condition and, unless the chargee’s remedies have been by instrument, expressly excluded, the instrument shall, contain a special acknowledgement that the chargor understands the effect of that section, and the acknowledgement shall be signed by the chargor or, where the chargor is a corporation, the persons attesting the affixation of the common seal.

(2) A date for the repayment of the money secured by a charge may be specified in the charge instrument, and if no such date is specified or repayment is not demanded by the charge on the date specified, the money shall be deemed to be repayable three months after the service of a demand, a written, by the chargee.

(3) The charge shall be completed by its registration as an encumbrance and the registration of the person in whose favour it is created as its proprietor and by filing the instrument.

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

(5) A charge shall have effect as a security only and shall not
operate as a transfer.

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

Second and subsequent charge.

57. (1) A proprietor whose land or lease is subject to a charge may create a second or subsequent charge in the same manner as the first charge and the same provisions shall apply, but any sale under the power expressed or implied in any such charge shall be expressed to be subject to all prior charges unless all those charges have been discharged.

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

Statutory charge.

58. Nothing in this Part shall affect the provisions of any Act that provides for the registration of a notification or note in respect of any sum of money owing to a public body.

Lender’s consent to transfer.

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.
PART VI—TRANSMISSIONS AND TRUSTS

Transmission on death of joint proprietor.

60. If any of the joint tenants of any land, lease or charge dies, the Registrar shall, upon proof of the death, delete the name of the deceased tenant from the register by registering the death certificate.

Transmission on death of a sole proprietor or proprietor in common.

61. (1) If a sole proprietor or a proprietor in common dies, the proprietor’s personal representative shall, on application to the Registrar in the prescribed form and on the production to the Registrar of the grant, be entitled to be registered by transmission as proprietor in the place of the deceased with the addition after the representative’s name of the words –as executor of the will of .................................. [deceased]‖ or –as administrator of the estate of .............................................. [deceased]‖, as the case may be.

(2) Upon confirmation of a grant, and on production of the grant the Registrar may, without requiring the personal representative to be registered, register by transmission—

(a) any transfer by the personal representative; and

(b) any surrender of a lease or discharge of a charge by the personal representative.

(3) In this section, –grant‖ means the grant of probate of the will, the grant of letters of administration of the estate or the grant of summary administration of the estate in favour of or issued by the Public Trustee, as the case may be, of the deceased proprietor.

Effect of transmission on death.

62. (1) Subject to any restriction on a person’s power of disposing of any land, lease or charge contained in an appointment, the personal representative or the person beneficially entitled on the death of the deceased proprietor, as the case may be, shall hold the
land, lease or charge subject to any liabilities, rights or interests that are unregistered but enforceable and subject to which the deceased proprietor held the land, lease or charge, but for the purpose of any dealing the person shall be deemed to have been registered as proprietor of the land lease or charge with all the rights conferred by this Act on a proprietor who has acquired land, a lease or a charge, as the case may be, for valuable consideration.

(2) The registration of a person as provided in section 61, shall relate back to and take effect from the date of the death of the proprietor.

Transmission on bankruptcy.

63. (1) Upon production to the Registrar of a certified copy of the order of court adjudging a proprietor bankrupt, or directing that the estate of a deceased proprietor be administered according to the law on bankruptcy—

(a) a copy of the order shall be filed; and

(b) the trustee in bankruptcy shall be registered as proprietor of any land, lease or charge of which the bankrupt or the deceased proprietor is proprietor, in place of the bankrupt or deceased proprietor.

(2) A trustee in bankruptcy shall be described in the register as “trustee of the property of .............................................................., a bankrupt”.

Liquidation.

64. (1) If a company is being wound up, the liquidator shall—

(a) produce to the Registrar any resolution or order appointing the liquidator; and

(b) satisfy the Registrar that the person has complied with the Companies Act, Cap. 486.

and the Registrar shall enter the appointment in respect of any land,
lease or charge of which the company is registered as proprietor, and file the copy of the resolution or order.

(2) An instrument executed by or on behalf of a company in liquidation that has been presented for registration after the appointment of the liquidator has been entered under subsection (1) shall be sealed with the common seal of the company and attested by the liquidator or, in the case of a company not required by law to have a common seal, and be signed by the liquidator whose signature shall be verified in accordance with section 45.

(3) Where a vesting order has been made under the Companies Act, the liquidator shall present the order to the Registrar who shall register the liquidator as proprietor of any land, lease or charge to which the order relates.

Transmission in other cases.

65. If a person has become entitled to any land, a lease or charge under any law or by virtue of any order or certificate of sale made or issued under any law, the Registrar shall, on the application of an interested person supported by instruments of transfer or such evidence as the Registrar may require, register the person entitled, as the proprietor.

Trusts not to be entered.

66. (1) A person acquiring land, a lease or a charge in a fiduciary capacity may be described in that capacity in the instrument of acquisition and be registered with the addition of the words “as trustee”, but the Registrar shall not enter particulars of any trust in the register.

(2) An instrument that declares, or is deemed to declare, a trust, or a certified copy, may be deposited with the Registrar for safe custody; but the instrument or copy shall not form part of the register or be deemed to be registered.

(3) Where the proprietor of land, a lease or a charge is a trustee, the proprietor shall hold the land, lease or charge subject to any
unregistered liabilities, rights or interests to which it is subject by virtue of the instrument creating the trust, and for the purpose of any registered dealings, the proprietor shall be deemed to be the absolute proprietor, and no person dealing with the land, a lease or a charge registered under this section shall be deemed to have notice of the trust, nor shall any breach of the trust create a right to indemnity under this Act.

**Survivor of trustees.**

67. Whenever two or more proprietors are registered jointly as trustees, and the survivor of such proprietors would not be entitled to exercise individually the powers that were vested in them, the Registrar shall enter a restriction to that effect.

**PART VII—RESTRAINTS ON DISPOSITION**

*Inhibitions*

**Power of the court to inhibit registered dealings.**

68. (1) The court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease or charge.

(2) A copy of the inhibition under the seal of the court, with particulars of the land, lease or charge affected, shall be sent to the Registrar, who shall register it in the appropriate register.

(3) An inhibition shall not bind or affect the land, lease or charge until it has been registered.

**Effect of inhibition.**

69. So long as an inhibition remains registered, any instrument that is inconsistent with the inhibition shall not be registered.

**Cancellation of inhibition.**

70. The registration of an inhibition shall not be cancelled except
in the following cases—

(a) on the expiration of the time stated in the inhibition;

(b) on proof to the satisfaction of the Registrar of the occurrence of an event stated in the inhibition;

(c) on the land, lease or charge being sold by a charge, unless such sale is itself inhibited; or

(d) by a consequent order of the court.

Cautions

Lodging of cautions.

71. (1) A person who—

(a) claims the right, whether contractual or otherwise, to obtain an interest in any land, lease or charge, capable of creation by an instrument registrable under this Act;

(b) is entitled to a licence; or

(c) has presented a bankruptcy petition against the proprietor of any registered land, lease or charge,

may lodge a caution with the Registrar forbidding the registration of dispositions of the land, lease or charge concerned and the making of entries affecting the land lease or charge.

(2) A caution may either—

(a) forbid the registration of dispositions and the making of entries; or

(b) forbid the registration of dispositions and the making of entries to the extent expressed in the caution.

(3) A caution shall be in the prescribed form, and the Registrar may require the cautioner to support the caution by a statutory
declaration.

(4) The Registrar may reject a caution that is unnecessary or whose purpose can be effected by the registration of an instrument under this Act.

(5) Subject to this section, the caution shall be registered in the appropriate register.

Notice and effect of caution.

72. (1) The Registrar shall give notice, in writing, of a caution to the proprietor whose land, lease or charge is affected by the caution.

(2) A disposition that is inconsistent with the caution shall not be registered while the caution is still registered except with the consent of the cautioner or by the order of the court.

Withdrawal and removal of caution.

73. (1) A caution may be withdrawn by the cautioner or removed by order of the court or, subject to subsection (2), by order of the Registrar.

(2) The Registrar, on the application of any person interested, may serve notice on the cautioner warning the cautioner that the caution will be removed at the expiration of the time stated in the notice.

(3) If a cautioner has not raised any objection at the expiry of the time stated, the Registrar may remove the caution.

(4) If the cautioner objects to the removal of the caution, the cautioner shall notify the Registrar, in writing, of the objection within the time specified in the notice, and the Registrar shall, after giving the parties an opportunity of being heard, make such order as the Registrar considers fit, and may in the order provide for the payment of costs.

(5) After the expiry of thirty days from the date of the registration
of a transfer by a chargee in exercise of the chargee's power of sale under the law relating to land, the Registrar shall remove any caution that purports to prohibit any dealing by the chargee that was registered after the charge by virtue of which the transfer has been effected.

(6) On the withdrawal or removal of a caution, its registration shall be cancelled, and any liability of the cautioner previously incurred under section 74 shall not be affected by the cancellation.

Second caution in respect of the same matter.

74. The Registrar may refuse to accept a further caution by the same person or anyone on behalf of that person in relation to the same matter as a previous caution.

Wrongful cautions.

75. Any person who lodges or maintains a caution wrongfully and without reasonable cause shall be liable, in an action for damages at the suit of any person who has sustained damage, to pay compensation to such person.

Restrictions

76. (1) For the prevention of any fraud or improper dealing or for any other sufficient cause, the Registrar may, either with or without the application of any person interested in the land, lease or charge, and after directing such inquiries to be made and notices to be served and hearing such persons as the Registrar considers fit, make an order (hereinafter referred to as a restriction) prohibiting or restricting dealings with any particular land, lease or charge.

(2) A restriction may be expressed to endure—

(a) for a particular period;

(b) until the occurrence of a particular event; or (c) until the making a further order is made, and may prohibit or restrict
all dealings or only or the dealings that do not comply with specified conditions, and the restriction shall be registered in the appropriate register.

(3) The Registrar shall make a restriction in any case where it appears that the power of the proprietor to deal with the land, lease or charge is restricted.

Notice and effect of restriction.

77. (1) The Registrar shall give notice, in writing, of a restriction to the proprietor affected by the restriction.

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

Removal and variation of restrictions.

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

(2) Upon the application of a proprietor affected by a restriction, and upon notice to the Registrar, the court may order a restriction to be removed, varied, or other order as it deems fit, and may make an order as to costs.

PART VIII—RECTIFICATION AND INDEMNITY

Rectification by Registrar.

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

(a) in formal matters and in the case of errors or omissions not materially affecting the interests of any proprietor;
(b) in any case and at any time with the consent of all affected parties; or

(c) if upon resurvey, a dimension or area shown in the register is found to be incorrect, in such case the Registrar shall first give notice in writing to all persons with an interest in the rectification of the parcel.

(2) Notwithstanding subsection (1), the Registrar may rectify or direct the rectification of a register or document where the document in question has been obtained by fraud.

(3) Upon proof of the change of the name or address of any proprietor, the Registrar shall, on the written application of the proprietor, make an entry in the register to record the change.

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

(a) the process of investigation including notification of affected parties;

(b) hearing of the matters raised; and

(c) the criteria to be followed in coming up with the decision.

Rectification by order of Court.

80. (1) Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.

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

**Right to indemnity.**

81. (1) Subject to the provisions of this Act and of any written law relating to the limitation of actions, any person suffering damage by reason of—

(a) any rectification of the register under this Act; or

(b) any error in a copy of or extract from the register or in a copy of or extract from any document or plan certified under this Act,

shall be entitled to indemnity.

(2) No indemnity shall be payable under this Act to any person who has caused or substantially contributed to the damage by fraud or negligence, or who derives title, otherwise than under a registered disposition made bona fide for valuable consideration, from a person who caused or substantially contributed to the damage.

**Amount of indemnity.**

82. An indemnity awarded in respect of the loss of any interest in land, shall not exceed—

(a) the value of the interest at the time when the mistake or omission which caused the damage was made, if the register is not rectified; or

(b) the value of the interest immediately before the time of rectification, if the register is rectified.

**Procedure for claiming indemnity.**

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

84. If any funds are paid by way of indemnity under this Part, the Cabinet Secretary shall be entitled to recover by suit or otherwise the amount so paid from any person who has caused or substantially contributed to the loss by fraud or negligence, and to enforce any express or implied agreement or other right which the person who has been indemnified would have been entitled to enforce in relation to the matter in respect of which the indemnity has been paid.

Errors in survey.

85. (1) A claim to indemnity shall not arise between the national or county government and a proprietor, and no suit shall be maintained on account of any surplus or deficiency in the area or measurement of any land disclosed by a survey showing an area or measurement differing from the area or measurement disclosed on any subsequent survey or from the area or measurement shown in the register or on the cadastral map.

(2) As between a proprietor and any person from or through whom the proprietor acquired the land, no claim to indemnity shall be maintainable on account of any surplus or deficiency in the area or measurement above or below that shown in any other survey or above or below the area or measurement shown in the register or on the cadastral map, after a period of six months from the date of registration of the instrument under which the proprietor acquired the land.

Review of the decision of the Registrar.

86. (1) If any question arises with regard to the exercise of any power or the performance of any duty conferred or imposed on the Registrar by this Act, the Registrar or any aggrieved person shall state a case for the opinion of the Court, and thereupon the Court shall give its opinion, which shall be binding upon the parties.

(2) The Rules Committee shall make rules on the procedures to be followed by the Registrar or an aggrieved person under subsection (1).
Meaning of ‘opportunity of being heard’.

87. (1) If this Act requires that a person be given an opportunity to be heard before a particular thing is to be, or may be done, that person shall be deemed to have been given such an opportunity—

(a) if the person attends before the Registrar personally or by an advocate or other agent, and is given such an opportunity; or

(b) if the person intimates, personally or by an advocate or other agent, that the person does not wish to be heard; or

(c) if the person has been served with a notice in writing specifying the nature of the thing to be done and appointing a day and time not less than seven days after service of the notice at which, if the person attends before the Registrar, the person may be heard.

(2) If a person or an advocate or other agent on the person's behalf attends before the Registrar concerning a matter on which the person is entitled to be heard, or fails to attend pursuant to such a notice, the Registrar may, adjourn the hearing from time to time, and, notwithstanding failure to attend, may, hear that person at any time.

Prescribed fees.

88. (1) The prescribed fees shall be payable in respect of a certificate of title, certificate of lease, searches, survey plans, printed forms and all other matters connected with registration, and the Registrar may refuse registration until the fees are paid.

(2) The Registrar shall not register a disposition of any land, lease or charge against which unpaid fees are recorded until such fees are paid and shall refuse to register a disposition or to issue a certificate of title or a certificate of lease if the fees payable to the Registrar under the Land Adjudication Act or the Land Consolidation Act are not recorded in the register as having been paid in full.
Recovery of fees and expenses.

89. Unpaid fees or expenses incurred by the Registrar shall constitute a debt due and shall be a civil debt recoverable summarily.

Summary recovery.

90. An order for the payment of a sum of money made by the Registrar under any power conferred by this Act shall be deemed to be a decree of the High Court and shall be enforceable as such.

PART IX—CO-TENANCY AND PARTITION

Meaning and incidents of co-tenancies.

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

(2) Except as otherwise provided in this Act, if two or more persons, not forming an association of persons under this Act or any other way which specifies the nature and content of the rights of the persons forming that association, own land together under a right specified by this section, they may be either joint tenants or tenants in common.

(3) An instrument made in favour of two or more persons and the registration giving effect to it shall show—

(a) whether those persons are joint tenants or tenants in common; and

(b) the share of each tenant, if they are tenants in common.

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

(a) dispositions may be made only by all the joint tenants;
(b) on the death of a joint tenant, that tenant's interest shall vest in the surviving tenant or tenants jointly; or

c) each joint tenant may transfer their interest *inter vivos* to all the other tenants but to no other person, and any attempt to so transfer an interest to any other person shall be void.

(5) If any land, lease or charge is owned in common, each tenant shall be entitled to an undivided share in the whole and on the death of a tenant, the deceased's share shall be treated as part of their estate.

(6) No tenant in common shall deal with their undivided share in favour of any person other than another tenant in common, except with the consent in writing, of the remaining tenants, but such consent shall not be unreasonably withheld.

(7) Joint tenants, not being trustees, may execute an instrument in the prescribed form signifying that they agree to sever the joining ownership and the severance shall be complete by registration in the prescribed register of the joint tenants and tenants in common.

(8) On and after the effective date, except with leave of a court, the only joint tenancy that shall be capable of being created shall be between spouses, and any joint tenancy other than that between spouses that is purported to be created without the leave of a court shall take effect as a tenancy in common.

**Certificate of ownership of co-tenants.**

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

(2) The Registrar, on application by co-tenant in the prescribed form, shall issue a copy of the certificate of ownership to that co-tenant, with an endorsement signed by the Registrar that the copy has been issued to the co-tenant named in the endorsement.

(3) The Registrar shall note the issue of the copy of the certificate of ownership, in the register, and indicate the date of the
issue of the copy and the co-tenant in whose name the copy has been issued.

**Co-ownership and other relationships between spouses.**

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

(a) there shall be a presumption that the spouses shall hold the land as joint tenants unless—

(i) a provision in the certificate of ownership or the certificate of customary ownership clearly states that one spouse is taking the land in, his or her own name only, or that the spouses are taking the land as joint tenants; or

(ii) the presumption is rebutted in the manner stated in this subsection; and

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

(2) If land is held in the name of one spouse only but the other spouse or spouses contribute by their labour or other means to the productivity, upkeep and improvement of the land, that spouse or those spouses shall be deemed by virtue of that labour to have acquired an interest in that land in the nature of an ownership in common of that land with the spouse in whose name the certificate of ownership or customary certificate of ownership has been registered and the rights gained by contribution of the spouse or spouses shall be recognized in all cases as if they were registered.

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

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

(4) If the spouse undertaking the disposition deliberately misleads the lender or, the assignee or transferee by the answers to the inquiries made in accordance with subsection (3)(a) or (3)(b), the disposition shall be void at the option of the spouse or spouses who have not consented to the disposition.

Partition.

94. (1) Any of the tenants in common may, with the consent of all the tenants in common, make an application, in the prescribed form, to the Registrar for the partition of land occupied in common and subject to the provisions of this Act and of any other written law applying to or requiring consent to a sub-division of land and of any covenants or conditions in a certificate of a land, the Registrar shall effect the partition of the land in accordance with the agreement of the tenants in common.

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

(a) any one or more of the tenants in common without the consent of all the tenants in common; or

(b) any person in whose favour an order has been made for the sale of an undivided share in the land in execution of a decree.

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

(a) whether the provisions of this Act, any other written law regulating the subdivision of land and any covenants and
conditions in a land have been or will be complied with if the partition is effected;

(b) the nature and location of the land;

(c) the number of tenants in common and the extent of their respective shares particularly, the extent of the share of any tenant in common by whom or on whose behalf the application has been made;

(d) the value of any contribution made by any tenant in common to the cost of improvements to or the maintenance of the land or buildings occupied in common;

(e) where the tenants in common are spouses or the tenants in common who do not agree on the partition are dependants of or related to the tenants in common, whether the interests of those tenants in common who have not agreed to the partition have been or will be adequately provided for as a consequence of or after the partition is effected, and particularly, a spouse or dependants of the tenant in common who is applying for the partition will not be rendered homeless by the partition;

(f) in respect of an application made by a person referred to in subsection (2)(b), whether the interests of the spouse or any dependants of the tenant in common whose share is to be sold in execution of a judgment or decree, will be adequately catered for and particularly, any spouse or dependants will not be rendered homeless by the sale;

(g) if the tenants in common are pastoralists, whether the tenants in common who have not agreed to the partition will, after the partition, still retain grazing rights, including grazing rights created by an easement in the partitioned land, to sufficient land of the quality and nature and in the location customarily used by those pastoralists;

(h) the proper development and use of the land and whether it may be adversely affected by the partition applied for;
(i) the hardship that would be caused to the applicant or applicants by the refusal to an order in comparison with the hardship that would be caused to any other person by making the order; and

(j) any other matters that the Registrar considers relevant.

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

Ancillary powers of Registrar in connection with partition.

95. (1) If the land sought to be partitioned is capable of being partitioned generally, and the tenants in common have agreed on the partition, but the resultant share of any particular tenant would be less in acreage than the minimum prescribed under the Land Act, either generally or for the development or use of the land which that particular proprietor intends to undertake on that land, the tenants in common shall endeavour to reach a compromise on the matter, with or without the aid of mediation, and any party who is dissatisfied with that compromise or otherwise may refer that partition to the Registrar who shall—

(a) add that share to the share of any other tenant in common; or

(b) distribute that share amongst two or more other tenants in common in any proportion that, in default of agreement, the Registrar shall consider just and reasonable; and cause the value of the share added or distributed to be assessed and order that there be paid to the tenant in common of that share by each tenant in common who has received an addition to his or her share, the value of that addition.

(2) If any sum is payable under subsection (1)(b), the Registrar may order that sum be secured by way of a charge on the share of the tenant or tenants in common liable to pay that sum.
Sale of co-owned land.

96. (1) If for any reason the land sought to be partitioned is incapable of being partitioned, or the partition would adversely affect the proper use of the land, and the applicant for partition or one or more of the other tenants in common require the land to be sold, and the tenants in common cannot agree on the terms and conditions of the sale or the application of the proceeds of the sale, the tenants in common may make an application to the court for an order for sale and the court may—

(a) cause a valuation of the land and of the shares of the tenants in common to be undertaken; and

(b) order the sale of the land or the separation and sale of the shares of the tenants in common by public auction or any other means which appears suitable to the court; or

(c) make any other order to dispose of the application which the court considers fair and reasonable,

(2) The court shall, in exercising its powers under paragraphs (b) and (c), have regard to any of the matters set out in section 94 (3) (a) to (f) that may be relevant in the circumstances.

(3) A tenant in common shall be entitled to purchase the land or any share of it that is offered for sale, either at an auction or at any time by private sale.

Partition subject to lender’s consent.

97. (1) If any undivided share in land or a lease held by tenants in common is subject to a charge, a partition of that land or lease shall not be registered by the Registrar unless the lender's written consent is produced to the Registrar.

(2) If a partition referred to in this section takes place with the consent of the lender, the land appropriated to the borrower shall, for all purposes, be deemed to be subject to the charge as if it had
originally been comprised by it and the land appropriated to the other tenants in common shall be released from the charge.

PART X—CREATION OF EASEMENTS AND ANALOGOUS RIGHT

Creation of easement.

98. (1) An owner of land or a lessor may, by an instrument in the prescribed form, grant an easement over the land, lease or a part of that land to the owner of another parcel of land or a lessee for the benefit of that other parcel of land.

(2) The owner of land or a lessor referred to in subsection (1), who is transferring, assigning or leasing land or a lease may, in the transfer, assignment or lease, grant an easement for the benefit of the land transferred, assigned or leased over the land retained by him or her or reserve an easement for the benefit of land retained by him or her.

(3) An instrument creating an easement shall clearly specify—

(a) the nature of the easement and any conditions, limitations or restrictions subject to which it is granted;

(b) the period of time for which it is granted;

(c) the land, or the specific part of it burdened by the easement; and

(d) the land to benefit from the easement, and shall, required by the Registrar, include in a plan that sufficiently defines the easement.

(4) If a co-owner, by a disposition, severs any building or part of it or land separated by a common dividing wall or other structure, whether that wall or other structure is a party wall or other structure, cross-easements of support of the dividing wall or other structure in respect of the severed buildings or land and the owners of the severed buildings or land shall be implied in the disposition and their successors in title shall be entitled to the benefit subject to the
(5) There shall be implied in every grant of an easement the grant of all ancillary rights which may be reasonably necessary for the full and effective enjoyment of the grant.

(6) A grant of an easement may contain an agreement between the owners of the dominant and servient lands binding either or both of them to pay for or contribute towards the cost of constructing, maintaining or re-pairing any way, wall, drainage, installation or work forming the subject matter of the easement.

(7) No easement and no right in the nature of an easement shall be capable of being acquired by any presumption of a grant from long and uninterrupted use.

(8) Nothing in this section shall prevent the lawful use of a right of way for persons and for stock acquired and that right of way shall be deemed to be property.

Cancellation and extinguishment of easements and analogous rights.

99. (1) Subject to subsection (3), an easement granted or an analogous right created under this Part may be cancelled by the person occupying the dominant land.

(2) Any cancellation pursuant to subsection (1), shall be effected in the prescribed form and the easement, or analogous right shall be extinguished on the date that cancellation is recorded in the register.

(3) On the application of any person occupying servient land, the Registrar may cancel an easement or an analogous right if the Registrar is satisfied that—

(a) the period of time for which the easement or analogous right was intended to subsist has expired; or

(b) the event upon which the easement or analogous right was intended to terminate has occurred
(4) The consent of any lessee or lender for the time being entitled to the benefit of any easement or analogous right shall be necessary for any cancellation of any such easements or analogous rights and such consent shall be signified in the prescribed form.

**Enjoyment of easement and analogous rights.**

**100.** (1) The benefit of an easement, or an analogous right granted under this Part shall be enjoyed, during the term of its existence, by the owner of the dominant land, any successors in title and by—

(a) any lessee of the dominant land, or so far as the nature of the easement, or analogous right or part of it permits, and

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

(2) Any person referred to in subsection (1) (a) or (b) who is by this section entitled to the benefit of an easement or analogous right may take out, in their own name, any proceedings necessary for the enforcement of the easement or the analogous rights.

**PART XI—MISCELLANEOUS**

**Jurisdiction of court.**

**101.** The Environment and Land Court established by the Environment and Land Court Act, 2011 No. 19 of 2011 has jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act.

**Fees.**

**102.** (1) The Cabinet Secretary may prescribe the rates of fees payable for any matters in respect of which, by this Act, prescribed fees are required to be paid by any person and shall keep such fees under continuous review.

(2) Fees prescribed under this section shall be at a per centum
rate of the value of the land that is, the subject of the application or other matter in respect of which fees are required to be paid.

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

(4) Unpaid fees or expenses incurred by the Government in connection with any attempt to recover those unpaid fees shall constitute a civil debt recoverable summarily.

**Offences.**

103. (1) A person who—

(a) knowingly makes a false statement, orally or in writing, in connection with a disposition or other transaction affecting land or any other matter arising under this Act, or

(b) knowingly gives a false information or makes a false statement, either orally or in writing, in connection with a call for information made under this Act or in connection with a investigation into the commission of any offence under this Act;

(c) fraudulently procures—

(i) the registration or issue of any certificate of ownership, or any other document or instrument relating to the land;

(ii) the making of a entry or the endorsement of a matter on a document or instrument referred to in subparagraph (i); or

(iii) the cancellation or amendment of the documents, instruments, entries or endorsements referred to in this paragraph.
(d) fraudulently alters, adds to, erases, defaces, mutilates or destroys any document or instrument relating to land or any entry on or endorsement of any such document or instrument; suppresses or conceals form the Registrar, or any authorized officer exercising powers under this Act, or assist or joins in so doing, any material document, factor matter,

commits an offence and is liable on conviction to a fine not exceeding five million shillings or imprisonment for a term not exceeding five years or to both such fine and imprisonment.

(2) A person who unlawfully occupies public land commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings, and in the case of a continuing offence to an additional fine not exceeding one hundred shillings for every day during which the offence continues.

PART XII—SAVINGS AND TRANSITION

Saving registers under repealed laws.

104. (1) A register maintained under any of the repealed Acts shall, on the commencement of this Act, be deemed to be the land register for the corresponding registration unit established under this Act.

(2) Upon receiving an adjudication register from the Director of Land Adjudication, the Registrar shall forward it to the Deputy Registrar or Registrar in charge of the registration unit concerned, who shall prepare a register for each person shown in the adjudication record as an owner of land, and every person shown in the adjudication record as being entitled to an interest that does not amount to ownership of land shall be registered as being so entitled, subject, in every case to, any restriction of the power of the proprietor or of any person so entitled to deal with the land and to any interest, lease, right of occupation, charge or encumbrance affecting the land.
Transiting title documents.

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

(a) if the title to a parcel of land is comprised in a grant or certificate of title registered under the repealed Registered Land Act—

(i) the grant or certificate of title shall be deemed to be a certificate of title or certificate of lease, as the case may be, issued under this Act; and

(ii) the folio of the register of titles kept under the repealed Act shall be deemed to be the register under this Act:

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

(b) if the title to the parcel is comprised in a grant or certificate of title registered under the repealed Registration of Titles Act"

(i) the grant or certificate of title shall be deemed to be a certificate of title or certificate of lease, as the case may be, issued under this Act; and

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

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

(c) if the title to the parcel is comprised in a register kept under the repealed Government Lands Act or the repealed Land Titles Act, the Registrar shall—

(i) as soon as conveniently possible, cause the title to be examined;

(ii) prepare a register, in the prescribed form, showing all subsisting particulars affecting the parcel which are capable of registration under this Act;

(iii) serve on the proprietor and on the proprietor of any lease or charge, a notice of intention to register; and

(iv) issue to the proprietor, upon request, a certificate of title or certificate of lease in the prescribed form;

(2) In compiling register in the name of the county or national government in trust for the people resident in the county or the people of Kenya, as the case may be, all public land in the area.

(3) Upon the registration of the Commission as proprietor of any land under subsection (2), there shall also vest in the Commission all rights, powers and liabilities under any grant or lease then subsisting in respect of the land.

Transitional provisions on rights, liabilities and remedies of parties over land.

106. (1) On the effective date, the repealed Acts shall cease to apply to a parcel of land to which this Act applies.

(2) Nothing in this Act shall affect the rights, liabilities and remedies of the parties under any mortgage, charge, memorandum of equitable mortgage, memorandum of charge by deposit of title or lease that, immediately before the registration under this Act of the land affected, was registered under any of the repealed Acts.
(3) For the avoidance of doubt—

(a) any rights, liabilities and remedies shall be exercisable and enforceable in accordance with the law that was applicable to the parcel immediately before the registration of the land under this Act; and

(b) the memorandum of equitable mortgage or memorandum of charge by deposit of title may be discharged by the execution of a discharge in the form prescribed under the Act under which the memorandum was first registered.

(4) Notwithstanding this section, any notice in writing required to be served under the repealed Acts upon any of the parties under any mortgage, charge, memorandum of equitable mortgage or memorandum of charge by deposit of title may be served in accordance with this Act, and such service shall be deemed to be effective for all purposes.

Savings and transitional provisions with respect to rights, actions, dispositions

107. (1) Unless the contrary is specifically provided for in this Act, any right, interest, title, power, or obligation acquired, accrued, established, coming into force or exercisable before the commencement of this Act shall continue to be governed by the law applicable to it immediately prior to the commencement of this Act.

(2) Unless the contrary is specifically provided for in this Act or the circumstances are such that the contrary must be presumed to be the case, where any step has been taken to create, acquire, assign, transfer, or otherwise execute a disposition, any such transaction shall be continued in accordance with the law applicable to it immediately prior to the commencement of this Act.

(3) For the avoidance of doubt, any lease granted to a noncitizen shall not exceed ninety-nine years.

(4) An instrument executed before the commencement of this Act whereby any disposition permitted under this Act is completed
may be presented for registration in the prescribed register and"

(a) the question whether any instrument so presented is to be registered shall be determined by the Registrar by reference to the law in force at the time of its execution; and

(b) subject to the provisions of paragraph (a), the provisions of this Act shall apply to that instrument as if it had been executed after the commencement of this Act.

(5) If any step has been taken to forfeit a lease or to foreclose a charge before the effective date, a court may, if it considers it just and reasonable so to do, on and after the effective date, on the application of the lessee or, as the case may be, the borrower to issue an injunction to the lessor or, as the case may be, the borrower to issue an injunction to the lessor or, as the case may be, the lender to stop the continuation of any such step and where a court has issued an injunction under this subsection, the lessor or lender to whom the injunction has been issued may commence any action under this Act to terminate that lease or bring that charge to an end.

Saving and transitional provisions with respect to rules, orders, regulations, directions, notices forms, notifications orders e.t.c.

108. Until the Cabinet Secretary makes the regulations contemplated under section 110, any rules, or other administrative acts made, given, issued or undertaken before the commencement of this Act under any of the Acts of Parliament repealed by this Act or any other law, shall continue in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring them into conformity with this Act

PART XI—MISCELLANEOUS PROVISIONS

Repeals.

109. The written laws set out in the Schedule are repealed.
Regulations.

110. (1) The Cabinet Secretary shall make regulations prescribing anything which may be prescribed under this Act generally and for the better carrying into effect the purposes and provisions of this Act and without prejudice to the generality of the foregoing, such regulations may prescribe—

(a) the forms to be used in connection with this Act;

(b) the manner and form of the registries of land, the procedures to be followed by the registries and hours they are to be open for business;

(c) procedures for the transfer of land from one category to another;

(d) particulars and format to be contained in a register or other document required to be kept under this Act; and

(e) any other matter for the better carrying into effect of the provisions of this Act.

(2) In making the regulations, rules or prescribing any matters required under this Act, the Cabinet Secretary shall take into account the advice of the Commission as required under the Constitution and such regulations or rules shall be tabled before Parliament for approval.

SCHEDULE (s. 109)

REPEALED LAWS

The Indian Transfer of Property Act 1882
The Government Lands Act, (Cap 280)

The Registration of Titles Act, (Cap 281)

The Land Titles Act, (Chapter 282)

The Registered Land Act, (Cap. 300)
The National Land Commission Act, 2012
THE NATIONAL LAND COMMISSION ACT, 2012

No. 5 of 2012

ARRANGEMENT OF SECTIONS

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FIRST SCHEDULE—PROCEDURE FOR APPOINTMENT OF
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SECOND SCHEDULE—OATH/AFFIRMATION OF THE OFFICE
OF CHAIRPERSON/MEMBERS/SECRETARY OF
THE COMMISSION

THIRD SCHEDULE—OATH/AFFIRMATION OF THE OFFICE OF
CHAIRPERSON/MEMBERS/SECRETARY OF THE
COUNTY LAND BOARD
FOURTH SCHEDULE—MEETINGS AND PROCEDURE OF THE COMMISSION
THE NATIONAL LAND COMMISSION ACT, 2012

No. 5 of 2012

Date of Assent: 27th April, 2012
Commencement: 2nd May, 2012

An Act of Parliament to make further provision as to the functions and powers of the National Land Commission, qualifications and procedures for appointments to the Commission; to give effect to the objects and principles of devolved government in land management and administration, and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

Short title.

1. This Act may be cited as the National Land Commission Act, 2012.

Interpretation.

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

"board" means a county land management board established pursuant to section 18;

"chairperson" means the chairperson of the Commission appointed in accordance with Article 250 (2) of the Constitution and section 8 of this Act;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to land;

"Commission" means the National Land Commission established
by Article 67 of the Constitution;

"community" means a clearly defined group of users of land identified on the basis of ethnicity, culture or similar community of interest as provided under Article 63(1) of the Constitution, which holds a set of clearly defined rights and obligations over land and land-based resources;

"irregularly" means in a manner that does not conform to standards, procedures or the criteria prescribed under this Act or any other written law;

"Registrar" means the Chief Land Registrar, Deputy Chief Land Registrar, County Land Registrars and Land Registrars appointed under the Land Registration Act, 2012;

"secretary" means the secretary to the Commission appointed by the Commission under Article 250 (12) of the Constitution, in accordance with the procedure set out in section 20 of this Act.

(2) Despite subsection (1), until after the first general elections under the Constitution, references in this Act to the expression "Cabinet Secretary" shall be construed to mean "Minister".

Object and purpose of the Act.

3. The object and purpose of this Act is to provide—

(a) for the management and administration of land in accordance with the principles of land policy set out in Article 60 of the Constitution and the national land policy;

(b) for the operations, powers, responsibilities and additional functions of the Commission pursuant to Article 67 (3) of the Constitution;

(c) a legal framework for the identification and appointment of the chairperson, members and the secretary of the Commission
pursuant to Article 250 (2) and (12) (a) of the Constitution; and

(d) for a linkage between the Commission, county governments and other institutions dealing with land and land related resources.

Offices of the Commission.

4. (1) The Headquarters of the Commission shall be in Nairobi.

(2) The Commission shall ensure access to its services in all parts of the Republic in accordance with Article 6(3) of the Constitution.

PART II—FUNCTIONS AND POWERS

Functions of the Commission.

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

(a) to manage public land on behalf of the national and county governments;

(b) to recommend a national land policy to the national government;

(c) to advise the national government on a comprehensive programme for the registration of title in land throughout Kenya;

(d) to conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities;

(e) to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;
(f) to encourage the application of traditional dispute resolution mechanisms in land conflicts;

(g) to assess tax on land and premiums on immovable property in any area designated by law; and

(h) to monitor and have oversight responsibilities over land use planning throughout the country.

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

(a) on behalf of, and with the consent of the national and county governments, alienate public land;

(b) monitor the registration of all rights and interests in land;

(c) ensure that public land and land under the management of designated state agencies are sustainably managed for their intended purpose and for future generations;

(d) develop and maintain an effective land information management system at national and county levels;

(e) manage and administer all unregistered trust land and unregistered community land on behalf of the county government; and

(f) develop and encourage alternative dispute resolution mechanisms in land dispute handling and management.

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

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

6. (1) The Commission, shall have all the powers necessary for the execution of its functions under the Constitution, this Act and any other written law.

(2) Without prejudice to the generality of subsection (1), the Commission shall have powers to—

(a) gather, by such means as it considers appropriate, any relevant information including requisition of reports, records, documents or any information from any source, including any State organ, and to compel the production of such information where it considers necessary;

(b) hold inquiries for the purposes of performing its functions under this Act;

(c) take any measures it considers necessary to ensure compliance with the principles of land policy set out in Article 60 (1) of the Constitution.

(3) In the exercise of its powers and the discharge of its functions, the Commission—

(a) may inform itself in such manner as it may consider necessary;

(b) may receive written or oral statements; and

(c) is not bound by the strict rules of evidence.

PART III—COMPOSITION AND ADMINISTRATION

Membership of the Commission.

7. (1) The Commission shall consist of a chairperson and eight other members appointed in accordance with the Constitution and the provisions of this Act.
(2) The chairperson and members of the Commission shall be appointed in accordance with the procedure set out in the First Schedule.

Qualification for appointment as chairperson or member of the Commission.

8. (1) A person shall be qualified for appointment as the chairperson if the person—

(a) holds a degree from a university recognized in Kenya;

(b) has knowledge and experience of at least fifteen years in matters relating to any of the following fields—

(i) public administration;

(ii) land management and administration;

(iii) management of natural resources;

(iv) land adjudication and settlement;

(v) land law, land survey, spatial planning or land economics;

or

(vi) social sciences;

(c) meets the requirements of Chapter Six of the Constitution; and

(d) has had a distinguished career in their respective fields.

(2) A person shall be qualified for appointment as a member of the Commission if the person—

(a) holds a degree from a university recognized in Kenya;

(b) has knowledge and experience of at least ten years in matters relating to any of the following fields —

(i) public administration;
(ii) land management and administration;

(iii) management of natural resources;

(iv) land adjudication and settlement;

(v) land law, land survey, spatial planning or land economics; or

(vi) social sciences;

(c) meets the requirements of Chapter Six of the Constitution; and

(d) has had a distinguished career in their respective fields.

(3) A person shall not be qualified for appointment as the chairperson or a member of the Commission if the person—

(a) is a member of Parliament or county assembly;

(b) is an official of a governing body of a political party;

(c) has at any time within the preceding five years, held or stood for election as a member of Parliament, a county assembly or as a governor;

(d) is an undischarged bankrupt;

(e) has been convicted of a felony;

(f) has benefitted from, or facilitated an unlawful or irregular allocation, acquisition or use of land or other public property; or

(g) has been removed from office for contravening the provisions of the Constitution or any other written law.

(4) Subsection (3) (b) shall cease to apply to a person after two general elections have been held since the person ceased to hold such office.
(5) The chairperson and members of the Commission shall be appointed for a single term of six years and shall not be eligible for re-appointment.

Oath of office of chairperson, member and secretary.

9. The chairperson, members and the secretary shall, before assuming office, make and subscribe, before the Chief Justice, to the oath or affirmation set out in the Second Schedule.

Vacancy in office of chairperson or member.

10. (1) The office of the chairperson or a member shall become vacant if —

(a) the holder —

(i) dies;

(ii) by notice in writing addressed to the President, resigns from office;

(iii) is convicted of a felony;

(iv) is absent from three consecutive meetings of the Commission without justifiable cause;

(v) is removed from office under any of the circumstances specified in Article 251(1) of the Constitution; or

(b) the term of office of the holder expires.

(2) The President shall publish every resignation, vacancy or termination in the Gazette within seven days of such resignation, vacancy or termination.

Removal of chairperson or member.

11. The chairperson or a member of the Commission may be removed from office in accordance with the procedure for removal provided under Article 251 of the Constitution.
Filling of vacancy.

12. (1) Where a vacancy occurs in the membership of the Commission, the President shall appoint a replacement in accordance with the procedure set out in the First Schedule.

(2) A member appointed under subsection (1), shall serve the Commission for a single term of six years.

Terms and conditions of service.

13. A member of the Commission shall be paid such remuneration or allowances as the Salaries and Remuneration Commission shall determine.

Review of grants and dispositions.

14. (1) Subject to Article 68 (c)(v) of the Constitution, the Commission shall, within five years of the commencement of this Act, on its own motion or upon a complaint by the national or a county government, a community or an individual, review all grants or dispositions of public land to establish their propriety or legality.

(2) Subject to Articles 40, 47 and 60 of the Constitution, the Commission shall make rules for the better carrying out of its functions under subsection (1).

(3) In the exercise of the powers under subsection (1), the Commission shall give every person who appears to the Commission to have an interest in the grant or disposition concerned, a notice of such review and an opportunity to appear before it and to inspect any relevant documents.

(4) After hearing the parties in accordance with subsection (3), the Commission shall make a determination.

(5) Where the Commission finds that the title was acquired in an unlawful manner, the Commission shall, direct the Registrar to revoke the title.

(6) Where the Commission finds that the title was irregularly
acquired, the Commission shall take appropriate steps to correct the irregularity and may also make consequential orders.

(7) No revocation of title shall be effected against a bona fide purchaser for value without notice of a defect in the title.

(8) In the exercise of its power under this section, the Commission shall be guided by the principles set out under Article 47 of the Constitution.

(9) The Commission may, where it considers it necessary, petition Parliament to extend the period for undertaking the review specified in subsection (1).

Investigation and adjudication.

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

Establishment of committees and county offices.

16. (1) The Commission may, establish committees for the better carrying out of its functions.

(2) The Commission may co-opt into the membership of its committees other persons whose knowledge and skills are necessary for the functions of the Commission.

(3) A person co-opted into the membership of a committee under subsection (2) may attend the meetings of the Commission and participate in its deliberations but shall have no right to vote at any meeting

(4) The Commission may pay persons co-opted to the committees such allowances and other expenses as it may determine from time to time.
(5) The Commission shall establish offices in the counties and may establish other offices in the sub-counties as it may consider necessary.

Consultation.

17. In carrying out its functions, the Commission shall work in consultation and co-operation with the national and county governments subject to Article 10 and Article 232 of the Constitution.

Establishment and composition of county land management boards.

18. (1) The Commission shall, in consultation and cooperation with the national and county governments, establish county land management boards for purposes of managing public land.

(2) A county land management board shall comprise—

(a) not less than three and not more than seven members appointed by the Commission; and

(b) a physical planner or a surveyor who shall be nominated by the county executive member and appointed by the governor.

(3) A member of the board, unless ex-officio, shall be appointed for a single term of five years and shall not be eligible for re-appointment.

(4) The chairperson of the board shall be elected by the members in their first sitting.

(5) The secretary to the board shall be appointed by the Commission.

(6) The appointment of the members shall be approved by the county assembly and shall take into account the national values referred to in Article 10 and Article 232 of the Constitution and shall reflect gender equity and ethnic diversity within that county.
(7) The chairperson, members and the secretary of the board shall, before assuming office, make and subscribe, before a judge, to the oath or affirmation set out in the Third Schedule.

(8) In the discharge of their functions, the boards shall be comply with the regulations made by the Commission under this Act.

(9) The boards shall—

(a) subject to the physical planning and survey requirements, process applications for allocation of land, change and extension of user, subdivision of public land and renewal of leases; and

(b) perform any other functions assigned by the Commission or by any other written law.

Conduct of business and affairs of the Commission.

19. (1) The business and affairs of the Commission shall be conducted in accordance with the Fourth Schedule.

(2) Except as provided in the Fourth Schedule, the Commission may regulate its own procedure.

Appointment of secretary.

20. (1) The appointment of the secretary to the Commission under Article 250 (12) of the Constitution shall be through a competitive and transparent recruitment process.

(2) A person shall not qualify for appointment under subsection (1) unless such person—

(a) is a citizen of Kenya;

(b) holds a degree from a university recognized in Kenya;

(c) has had at least five years experience at senior management level;
(d) has knowledge and experience in any one of the following fields—

(i) public administration;
(ii) finance and accounting;
(iii) law;
(iv) economics;
(v) management;
(vi) land and natural resources; or
(vii) any other relevant field; and

(e) meets the requirements of Chapter Six of the Constitution.

(3) The secretary shall—

(a) be the chief executive officer of the Commission and head of the secretariat and shall be responsible to the Commission;

(b) serve on such terms and conditions as the Commission may determine: and

(c) before, assuming office, take and subscribe to the oath or affirmation of office set out in the Second Schedule.

(4) The secretary, shall be the accounting officer of the Commission and shall be responsible to the Commission for—

(a) all income and expenditure of the Commission;

(b) all assets and the discharge of all liabilities of the Commission; and

(c) the proper and diligent implementation of Part IV of this Act.

(5) The secretary shall hold office for a term of five years and shall be eligible for re-appointment for the further term of five years.
Removal of secretary.

21. (1) The secretary may be removed from office by the Commission in accordance with the terms and conditions of service for—

(a) inability to perform the functions of the office of the secretary arising out of physical or mental incapacity;

(b) gross misconduct or misbehavior;

(c) incompetence or neglect of duty;

(d) violation of the Constitution; or

(e) any other ground that would justify removal from office under the terms and conditions of service.

(2) Before the secretary is removed under subsection (1), the secretary shall be given—

(a) sufficient notice of the allegations made against them; and

(b) an opportunity to present their defence against the allegations.

Appointment of staff.

22. The Commission shall have the power to appoint its own staff in accordance with Article 252(1)(c) of the Constitution.

Secondment of staff.

23. (1) In addition to the staff appointed by the Commission, the national and county governments may, upon the request by the Commission, second to the Commission such number of public officers as may be necessary for the performance of the functions of the Commission.

(2) A public officer seconded to the Commission shall, during the period of secondment, be deemed to be an officer of the Commission
and shall be subject only to the direction and control of the Commission.

Seal of the Commission.

24. (1) The common seal of the Commission shall be kept in such custody as the Commission shall direct and shall not be used except on the order of the Commission.

(2) The common seal of the Commission when affixed to a document and duly authenticated shall be judicially and officially noticed and unless the contrary is proved, any necessary order or authorization of the Commission under this Act shall be presumed to have been duly given.

Protection from personal liability.

25. No matter or thing done by a member of the Commission or any officer, employee or agent of the Commission shall, if the matter or thing is done in good faith for executing the functions, powers or duties of the Commission, render the member, officer, employee or agent personally liable to any action, claim or demand whatsoever.

PART IV—FINANCIAL PROVISIONS

Funds of the Commission.

26. (1) The funds of the Commission shall consist of—

(a) monies allocated by Parliament for the purposes of the Commission;

(b) such monies or assets as may accrue to the Commission in the course of the exercise of its powers, or the performance of its functions under this Act; and

(c) all monies from any other source provided or donated or lent to the Commission.

(2) The receipts, earnings or accruals of the Commission and the balances at the close of each financial year shall not be paid into the
Consolidated Fund but shall be retained for the purposes of this Act in accordance with Article 206 (1) (a) and (b) of the Constitution.

Financial year.

27. The financial year of the Commission shall be the period of twelve months commencing on the first of July and ending on the thirtieth of June of the subsequent year.

Annual estimates.

28. (1) Before the commencement of each financial year, the Commission shall cause to be prepared estimates of the revenue and expenditure of the Commission for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Commission for the financial year concerned.

(3) The Cabinet Secretary shall present the estimates approved by the Commission under subsection (2) for consideration and approval by the National Assembly.

Accounts and audit.

29. (1) The Commission shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Commission.

(2) Within a period of three months after the end of each financial year, the Commission shall submit to the Auditor-General, the accounts of the Commission in respect of that year together with—

(a) a statement of the income and expenditure of the Commission during that year; and

(b) a statement of the assets and liabilities of the Commission on the last day of that financial year.

(3) The annual accounts of the Commission shall be prepared,
audited and reported upon in accordance with the provisions of Articles 226 and 229 of the Constitution and the Public Audit Act, 2003 No. 12 of 2003.

**PART V—TRANSITIONAL PROVISIONS**

**Savings.**

30. Notwithstanding the provisions of this Act—

(a) any orders or notices relating to public land administration made or issued by the Ministry of Lands before the commencement of the Act shall be deemed to have been made or issued under this Act; and

(b) any function or transaction, civil proceedings or any other legal or other process in respect of any matter carried out in relation to the administration of public land administration, by or on behalf of the Ministry of Lands before the commencement of this Act, shall be deemed to have been carried out under this Act.

**Transfer of staff.**

31. (1) Subject to subsection (3), a person who, immediately before the commencement of this Act, was serving on contract in the Ministry of Lands in any of the departments whose services have been transferred to the Commission shall, at the commencement of this Act, be appointed or employed as a member of staff of the Commission for the unexpired period, if any, of the term.

(2) Subject to subsection (3) and Article 252 (1)(c) of the Constitution, every person who, immediately before the commencement of this Act, was an employee of the Government in the Ministry of Lands in any of the departments whose functions have been transferred to the Commission shall, upon the commencement of this Act, be employed or appointed as a member of staff of the Commission.

(3) Before appointing or employing a person to whom
subsections (1) or (2) apply, the Commission shall—

(a) require such person to make an application for employment or appointment to the Commission; and

(b) using the criteria determined by the Commission, vet such a person to ensure that he or she is fit and proper to serve in the position applied for as a member of staff of the Commission.

(4) An applicant who fails to meet the vetting criteria under subsection (3), shall not be employed or appointed by the Commission.

(5) Notwithstanding the provisions of this section, and for as long as the Commission or the county government shall not have appointed staff to perform the functions transferred under this section, the staff of the Ministry of Lands shall continue to perform those functions and their acts shall be deemed to be those of the Commission or county government.

Transfer of assets.

32. (1) All property, assets, rights, liabilities, obligations, agreements and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the Ministry of Lands with respect to the departments whose functions have been transferred to the Commission, shall upon the commencement of this Act, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Commission to the same extent as they were enforceable by or against the such departments before the commencement of this Act.

(2) Where the transfer of any property transferred to or vested in the Commission under subsection (1) is required by any written law to be registered, the Commission shall, within three months from the commencement of this Act or within such other period as may be prescribed in the written law, apply to the appropriate registering authority for the registration of the transfer and thereupon the
registering authority shall, at no cost to the Commission or any person by way of registration fees, stamp duty or other taxes—

(a) make such entries in the appropriate register as shall be necessary to give effect to the transfer;

(b) where appropriate, issue to the Commission a certificate of title or other statutory evidence of ownership of the property or make such amendments on such certificates or in the appropriate register as may be necessary; and

(c) make any necessary endorsements on such deeds or other documents as may be presented to such registering authority relating to the title, right or obligation concerned.

PART VI— MISCELLANEOUS PROVISIONS

Annual report.

33. (1) The report of the Commission under Article 254 of the Constitution shall, in respect of the financial year to which it relates, contain—

(a) the financial statements of the Commission;

(b) a description of the activities of the Commission;

(c) information relating to the progress made in the registration of title in land;

(d) recommendations made by the Commission to the county or national governments or to any state agency or organ and the action taken on such recommendations;

(e) any impediments to the work of the Commission; and
(f) such other information as the Commission considers appropriate in relation to the functions of the Commission.

(2) The Commission shall cause the annual report and any information as may be required under Article 254(3) of the Constitution to be published and publicized in such manner as the Commission may determine.

**Code of conduct.**

34. The Commission shall within six months develop a code of conduct for its members and staff.

**Offences.**

35. (1) A person shall not—

   (a) without justification or lawful excuse, obstruct or hinder, assault or threaten a member or a member of staff of the Commission acting under this Act;

   (b) submit false or misleading information to the Commission; or

   (c) misrepresent to or knowingly mislead a member or a member of staff of the Commission acting under this Act.

   (2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding three million shillings, or to imprisonment for a term not exceeding five years, or to both.

**Regulations.**

36. The Commission may make regulations generally for the better carrying into effect of any provisions of this Act and such regulations shall be tabled before Parliament for approval.

**FIRST SCHEDULE**

(s. 7 (2))
PROCEDURE FOR APPOINTMENT OF CHAIRPERSON AND MEMBERS OF THE COMMISSION

(1) The President, in consultation with the Prime Minister shall, within fourteen days after the commencement of this Act and whenever a vacancy arises, constitute a selection panel comprising—

(a) a nominee of the Office of the President;

(b) a nominee of the Office of the Prime Minister;

(c) a representative of the Cabinet Secretary;

(d) two persons, of opposite gender, nominated by the Non-Governmental Organisations Council, who have demonstrated competence and capacity in matters related to natural resources;

(e) one person who is a citizen of Kenya, nominated by the Kenya Private Sector Alliance from their member organizations who has demonstrated competence and capacity in the land sector.

(f) a nominee of the Association of Professional Societies in East Africa; and

(g) a nominee of the National Gender and Equality Commission:

Provided that after the first elections under the Constitution, the nominee of the office of the Prime Minister under subparagraph (b) shall not constitute membership of the selection panel.

(2) The Public Service Commission shall—

(a) convene the first meeting of the selection panel, at which the members of the selection panel shall elect a chairperson from among their number; and
(b) provide the selection panel with such facilities and other support as it may require for the discharge of its functions under this Act.

(3) The selection panel shall, within seven days of convening, by advertisement in at least two daily newspapers of nationwide circulation, invite applications from persons who qualify for nomination and appointment for the position of the chairperson and members referred to under section 8.

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

(a) consider the applications received under paragraph (3) to determine their compliance with the provisions of the Constitution and this Act;

(b) short list the applicants;

(c) publish the names of the shortlisted applicants and the qualified applicants in at least two daily newspapers of nationwide circulation;

(d) conduct interviews of the shortlisted persons in public;

(e) shortlist two qualified applicants for the position of chairperson;

(f) shortlist sixteen qualified applicants for the position of the members; and

(g) forward the names of the qualified persons to the President.

(5) The President shall, within fourteen days of receipt of the names of successful applicants forwarded under paragraph (4)(g), nominate the chairperson and members of the Commission and forward the names of the persons so selected to the National Assembly for approval.
(6) The National Assembly shall, within twenty-one days of the day, it next sits after receipt of the names of the applicants under paragraph (5), vet and consider all the applicants, and may approve or reject any or all of them.

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

(8) The President shall, within seven days of receipt of the approved nominees from the National Assembly, by notice in the Gazette, appoint the chairperson and members of the Commission approved by the National Assembly.

(9) Where the National Assembly rejects any nomination, the Speaker shall within three days communicate its decision to the President and request the President to submit fresh nominations.

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

(11) If the National Assembly rejects any or all of the subsequent nominees submitted by the President for approval under paragraph (10), the provisions of paragraphs (1) to (5) shall apply.

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

(13) The selection panel may, subject to this section, determine its own procedure.

(14) Until after the first general elections under the Constitution, the President shall, in the appointment of the chairperson or members of the Commission, consult the Prime Minister.
(15) The selection panel shall stand dissolved upon the appointment of the chairperson and members of the Commission under paragraph (8).

(16) Where the provisions of paragraph (10) apply, the selection panel shall continue to exist but shall stand dissolved upon the requisite appointments being made under paragraph (11).

(17) Despite the foregoing provisions, the President may, by notice in the Gazette, extend the period specified in respect of any matter under this section by a period not exceeding twenty-one days.
SECOND SCHEDULE  (s. 9 and 20(3) (c))

OATH/AFFIRMATION OF THE OFFICE OF CHAIRPERSON/
A MEMBER/SECRETARY OF THE COMMISSION

I ………………………………………. having been appointed (the chairperson to /member of /secretary to) the National Land Commission under the National Land Commission Act, 2012, do solemnly (swear/declare and affirm) that I will at all times obey, respect and uphold the Constitution of Kenya and all other laws of the Republic; that I will faithfully and fully, impartially and to the best of my knowledge and ability, discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, or prejudice. (SO HELP ME GOD).

Sworn/declared by the said ……………………………………………………………

Before me this …………………… Day of ……………………………

……………………………………
Chief Justice.

THIRD SCHEDULE  (s. 18 (6))

OATH/AFFIRMATION OF THE OFFICE OF CHAIRPERSON/
A MEMBER/SECRETARY OF THE COUNTY LAND
MANAGEMENT BOARD

I …………………………………………………………… having been appointed (the chairperson to/member of /secretary to) the County Land Board under the National Land Commission Act, 2012, do solemnly (swear/declare and affirm) that I will at all times obey, respect and uphold the Constitution of Kenya and all other laws of the Republic; that I will faithfully and fully, impartially and to the best of my knowledge and ability, discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, or prejudice. (SO
HELP ME GOD).

Sworn/declared by the said .................................................................

Before me this ..................... Day of ..................................................

........................................
Judge.

FOURTH SCHEDULE  
(s.19) 

MEETINGS AND PROCEDURE OF THE COMMISSION

Meetings.

1. (1) The Commission shall decide when and where it meets and the meetings shall be convened by the chairperson.

(2) The Commission shall have at least four meetings in every financial year and not more than four months shall elapse between one meeting and the next meeting.

(3) Unless three quarters of the members otherwise agree, at least seven days notice in writing of a meeting shall be given to every member.

(4) A meeting shall be presided over by the chairperson or in the absence If the chairperson, by the vice-chairperson of the Commission.

(5) The members of the Commission shall elect a vice-chairperson from among themselves—

(a) at the first sitting of the Commission; and

(b) whenever it is necessary to fill the vacancy in the office of the vice-chairperson.
(6) The chairperson shall, on the written application of one-third of members, convene a special meeting of the Commission.

(7) The Commission may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Commission.

Conflict of interest.

2. (1) If a person has a personal or fiduciary interest in any matter before the Commission, and is present at a meeting of the Commission or any committee at which such a matter is the subject of consideration, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not take part in any consideration or discussion of, or vote on any question touching such matter.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A person who contravenes subparagraph (1) commits an offence and is liable, upon conviction, to a fine not exceeding three million shillings, or to imprisonment for a term not exceeding seven years, or to both such fine and imprisonment.

(4) No member or staff of the Commission shall transact any business or trade with the Commission.

Quorum.

3. (1) Subject to subparagraph (2), the quorum of the meeting shall not be less than half of the members.

(2) Where there is a vacancy in the Commission, the quorum of the meeting shall not be less than three members.

Voting.

4. A question before the Commission shall be decided by a majority of the members.
Rules of procedure and minutes.

5. The Commission shall—

(a) determine rules of procedure for the conduct of its business; and

(b) keep minutes of its proceedings and decisions.
The Environment & Land Court Act, 2011
THE ENVIRONMENT AND LAND COURT ACT, 2011

No.19 of 2011

Date of Assent: 27th August, 2011  
Date of Commencement: 30th August, 2011

ARRANGEMENT OF SECTIONS

Section

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1—Short title.  
2—Interpretation.  
3—Overriding objective.

PART II—ESTABLISHMENT AND CONSTITUTION OF THE COURT

4—Establishment of the Court.  
5—Composition of the Court.  
6—Principal Judge.  
7—Qualifications of and appointment of Judges of the Court.  
8—Tenure of office of Judges of the Court.  
9—Registrar of the Court.  
10—Qualifications for appointment of the Registrar of the Court.  
11—Functions of the Registrar.  
12—Review of the Registrar’s decision.
PART III—JURISDICTION OF THE COURT

13—Jurisdiction of the Court
14—Enforcement of Court orders.
15—The seal of the Court.
16—Appeals.

PART IV—PROCEEDINGS OF THE COURT

17—Proceedings before the Court.
18—Guiding principles.
19—Procedure and powers of the Court.
20—Alternative dispute resolution.
21—Quorum of the Court.
22—Representation before the Court.
23—Language of the Court.
24—Rules.

PART V—MISCELLANEOUS PROVISIONS

25—Gender equity and equal opportunities.
26—Access to justice.
27—Regulations.
28—Bar to further suits.
29—Offences.
30—Transitional provisions.
31—Repeal.
AN ACT of Parliament to give effect to Article 162(2)(b) of the Constitution; to establish a superior court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land, and to make provision for its jurisdiction functions and powers, and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

Short title.

1. This Act may be cited as the Environment and Land Court Act, 2011.

Interpretation.

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

“Chief Justice” means the Chief Justice appointed
under Article 166 of the Constitution;

“Chief Registrar” means the person holding the office of Chief Registrar established under Article 161 of the Constitution;

“Court” means the Environment and Land Court established under section 4 pursuant to Article 162 (2)(b);

“environment” means the totality of nature and natural resources, including the cultural heritage and infrastructure essential for social-economic activities;

“Judge” means a person appointed in accordance with the provisions of Article 166(1)(b) of the Constitution;

“land” has the same meaning assigned to it by Article 260 of the Constitution;

“natural resources” has the same meaning assigned to it under Article 260 of the Constitution;

“Principal Judge” means the principal judge of the Court elected in accordance with Article 165(2) of the Constitution;

“Register” means the register where all pleadings and supporting documents and all orders and decisions of the Court are kept;

“Registrar” means the Registrar of the Environment and Land Court approved under section 9;

“rules” means the rules made under section 24.
Overriding objective.

3. (1) The principal objective of this Act is to enable the Court to facilitate the just, expeditious, proportionate and accessible resolution of disputes governed by this Act.

(2) The Court shall, in the discharge of its functions under this Act give effect to the principal objective in subsection (1).

(3) The parties and their duly authorised representatives, as the case may be, shall assist the Court to further the overriding objective and participate in the proceedings of the Court.

Part II—Establishment and Constitution of the Court

Establishment of the Court.

4. (1) There is established the Environment and Land Court.

(2) The Court shall be a superior court of record with the status of the High Court.

(3) The Court shall have and exercise jurisdiction throughout Kenya and shall pursuant to section 26, ensure reasonable and equitable access to its services in every county.

Composition of the Court.

5. The Court shall consist of—
(a) the Principal Judge; and

(b) such number of Judges as may be necessary for the efficient and effective discharge of the functions of the Court.

**Principal judge.**

6. (1) The Principal Judge shall be elected in accordance with Article 165(2) of the Constitution.

(2) The Principal Judge shall hold office for a non-renewable term of five years.

(3) The Principal Judge shall have supervisory powers over the Court and shall report to the Chief Justice.

(4) In the absence of the Principal Judge or in the event of a vacancy in the office of the Principal Judge, the judges of the Court may elect any other Judge of the Court to exercise the functions of the Principal Judge.

**Qualifications of and appointment of Judges of the Court.**

7. (1) A person shall be qualified for appointment as Judge of the Court if the person—

(a) meets the requirements of Article 166(2)(a) and (5) of the Constitution;

(b) has at least ten years’ experience as a distinguished academic or legal practitioner
with knowledge and experience in matters relating to environment or land; or

(c) has held the qualifications specified in paragraphs (a) and (b) for a period amounting in the aggregate, to ten years; and

(d) meets the requirements of Chapter Six of the Constitution.

(2) The Chief Justice may on the recommendation of the Judicial Service Commission, transfer a judge who meets the qualifications set out at subsection (1) to serve in the Court.

**Tenure of office of Judge of the Court.**

8. A Judge of the Court shall hold office until the Judge—

(a) retires from office in accordance with Article 167(1) of the Constitution;

(b) resigns from office in accordance with Article 167(5) of the Constitution; or

(c) is removed from office in accordance with Article 168 of the Constitution.

**Registrar of the Court.**

9. (1) There shall be a Registrar of the Court appointed by the Judicial Service Commission.
(2) Any administrative function of the Registrar may in the Registrar’s absence, be performed by any member of staff of the Court authorized by the Principal Judge.

Qualifications for appointment of the Registrar of the Court.

10. A person shall be qualified for appointment as Registrar if the person—

(a) is an advocate of the High Court of Kenya and has, since admission to the Roll of Advocates—

(i) become eligible for appointment as a Judge of the High Court;

(ii) served for at least eight years as a professionally qualified magistrate; or

(iii) attained at least eight years’ experience as a distinguished academic or legal practitioner or such experience in other relevant legal field;

(b) demonstrated competence in the performance of administrative duties for not less than three years; and

(c) meets the requirements of Chapter Six of the Constitution.
Functions of the Registrar of the Court.

11. (1) The Registrar shall perform the duties assigned to the Registrar under this Act and such other duties as the Chief Registrar may direct, and in particular be responsible for—

(a) the establishment and maintenance of the Registry of the Court;

(b) the acceptance, transmission, service and custody of documents in accordance with the Rules;

(c) facilitating the enforcement of decisions of the Court;

(d) certifying that any order, direction or decision is an order, direction or decision of the Court, the Chief justice or a Judge, as the case may be;

(e) the maintenance of the Register of the Court;

(f) causing to be kept records of the proceedings and minutes of the meetings of the Court and such other records as the Court may direct;

(g) managing and supervising the staff of the Court;

(h) the day to day administration of the Court;

(i) managing the library of the Court;

(j) facilitating access to judgments and records of the Court;
(k) undertaking any other duties assigned by Chief Registrar.

(2) In relation to the proceedings before the Court, the Registrar may consider and dispose of procedural or administrative matters in accordance with the Rules or on the direction of the Principal Judge.

**Review of the Registrar’s decision.**

12. (1) Any person aggrieved by a decision of the Registrar on matters relating to judicial functions of the Court may apply for review by a Judge of the Court in accordance with the Rules.

(2) The Judge may confirm, modify or reverse the decision of the Registrar referred to in subsection (1).

**PART III — JURISDICTION OF THE COURT**

**Jurisdiction of the Court**

13. (1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other written law relating to environment and land.

(2) In exercise of its jurisdiction under Article 162 (2) (b) of the Constitution, the Court shall have power to hear and determine disputes relating to
environment and land, including disputes—

(a) relating to environmental planning and protection, trade, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;

(b) relating to compulsory acquisition of land;

(c) relating to land administration and management;

(d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and

(e) any other dispute relating to environment and land.

(3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to the environment and land under Articles 42, 69 and 70 of the Constitution.

(4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.

(5) The Court shall have supervisory jurisdiction
over the subordinate courts, local tribunals, persons
or authorities in accordance with Article 165(6) of the
Constitution.

(6) For the purposes of subsection (7)(b), the
Court may call for the record of any proceedings
before any subordinate court, body, authority or local
tribunal exercising judicial or quasi-judicial functions,
or a decision of any person exercising executive
authority referred to in subsection (7)(b), and may
make any order or give any direction it considers
appropriate to ensure the fair administration of
justice.

(7) In exercise of its jurisdiction under this Act,
the Court shall have power to make any order and
grant any relief as the Court deems fit and just,
including—

(a) interim or permanent preservation orders
   including injunctions;

(b) prerogative orders;

(c) award of damages;

(d) compensation;

(e) specific performance;

(g) restitution;

(h) declaration; or

(i) costs.
Enforcement of Court Orders.

14. A judgment, award, order or decree of the Court shall be enforceable in accordance with the Rules.

The seal of the Court.

15. The seal of the Court shall be such device as may be determined by the Court and shall be kept in the custody of the Registrar.

Appeals.

16. Appeals from the Court shall lie to the Court of Appeal against any judgment, award, order or decree issued by the Court in accordance with Article 164(3) of the Constitution.

PART IV—PROCEEDINGS OF THE COURT

Proceedings before the Court.

17. Except as otherwise provided for in Article 50(8) of the Constitution, the proceedings of the Court shall be in public.

Guiding principles.

18. In exercise of its jurisdiction under this Act, the Court shall be guided by the following principles—

(a) the principles of sustainable development, including;
(i) the principle of public participation in the development of policies, plans and processes for the management of the environment and land;

(ii) the cultural and social principles traditionally applied by any community in Kenya for the management of the environment or natural resources in so far as the same are relevant and not inconsistent with any written law;

(iii) the principle of international co-operation in the management of environmental resources shared by two or more states;

(iv) the principles of intergenerational and intragenerational equity;

(v) the polluter-pays principle; and

(vi) the pre-cautionary principle;

(b) the principles of land policy under Article 60(1) of Constitution;

(c) the principles of judicial authority under Article 159(2) of the Constitution;

(d) the national values and principles of governance under Article 10(2) of the Constitution; and

(e) the values and principles of public service under Article 232(1) of the Constitution.
19. (1) In any proceedings to which this Act applies, the Court shall act expeditiously, without undue regard to technicalities of procedure and shall not be strictly bound by rules of evidence:

Provided that the Court may inform itself on any matter as it thinks just and may take into account opinion evidence and such facts as it considers relevant and material.

(2) The Court shall not be bound by the procedure laid down by the Civil Procedure Act and shall be guided by the principles of natural justice.

(3) The Court shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court while trying a suit, in respect of the following matters, namely—

(a) summoning and enforcing the attendance of any person and examining them on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or document or copy of such record or document from any office in accordance with Article 35 of the Constitution;
(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decision;

(g) dismissing an application for default or determining it ex parte;

(h) setting aside any order of dismissal of any application for default or any order passed by it ex parte;

(i) passing an interim order, including granting an injunction or stay after providing the parties concerned an opportunity to be heard, on any application made or appeal filed under this Act; and

(j) any other matter which may be prescribed by the rules.

(4) The Court shall have power to require any person who appears to it to have special knowledge of any relevant matter, or of any of the matters to which this Act applies or any written law to which it relates, to furnish in writing or otherwise, and to confirm on oath or affirmation, such expert opinion as may be relevant to any of the issues in the proceedings.

Alternative dispute resolution.

20. (1) Nothing in this Act may be construed as precluding the Court from adopting and implementing, on its own motion, with the agreement of or at the request of the parties, any other appropriate means of alternative dispute resolution including conciliation,
mediation and traditional dispute resolution mechanisms in accordance with Article 159(2)(c) of the Constitution.

(2) Where alternative dispute resolution mechanism is a condition precedent to any proceedings before the Court, the Court shall stay proceedings until such condition is fulfilled.

**Quorum of the Court.**

21. (1) The Court shall be properly constituted for the purposes of its proceedings under this Act by a single judge.

(2) Notwithstanding subsection (1), any matter certified by the Court as raising a substantial question of law—

(a) under Article 165(3)(b) or (d) of the Constitution; or

(b) concerning impact on the environment and land,

shall be heard by an uneven number of judges, being not less than three, assigned by the Principal Judge.

**Representation before the Court.**

22. A party to the proceedings may act in person or be represented by a duly authorised representative.
Language of the Court.

23. (1) The language of the Court shall be English and Kiswahili.

(2) Notwithstanding subsection (1), in all appropriate cases, the Court shall facilitate the use by parties of indigenous languages, Kenyan Sign language, Braille and other communication formats and technologies accessible to persons with disabilities.

(3) Where it is expedient and appropriate to do so, the Court may direct that proceedings be conducted and appearances be made through electronic means of communication, including tele-conferencing, video-conferences or other modes of electronic communication.

Rules.

24. (1) The Chief Justice shall, in consultation with the Court, make rules to regulate the practice and procedure of the Court.

(2) The Chief Justice shall make rules to regulate the practice and procedure, in tribunals and subordinate courts, for matters relating to land and environment.

(3) The Chief Justice shall in consultation with the Court make rules for the determination of admissibility by the Court of proceedings pending before any court or local tribunal.

(4) In the absence of the rules envisaged under subsection (1), the Court shall regulate its own
procedure.

PART VI—MISCELLANEOUS PROVISIONS

Gender equity and equal opportunities.

25. All appointments under this Act shall be made in accordance with Article 27 of the Constitution and shall meet the requirements of Chapter Six of the Constitution.

Access to justice.

26.(1) The Court shall ensure reasonable and equitable access to its services in all Counties.

(2) A sitting of the Court may be held at such places and at such times, as the Court may deem necessary for the expedient and proper discharge of its functions under this Act.

Regulations.

27. The Court may make regulations for the better carrying out of its functions under this Act.

Bar to further suits.

28. The Court shall not adjudicate over disputes between the same parties and relating to the same issues previously and finally determined by any court of competent jurisdiction prior to the commencement of this Act.
Offences.

29. Any person who refuses, fails or neglects to obey an order or direction of the Court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both.

Transitional.

30. (1) All proceedings relating to the environment or to the use and occupation and title to land pending before any Court or local tribunal of competent jurisdiction shall continue to be heard and determined by the same court until the Environment and Land Court established under this Act comes into operation or as may be directed by the Chief Justice or the Chief Registrar.

(2) The Chief Justice may, after the Court is established, refer part-heard cases, where appropriate, to the Court.

Repeal.

31. The Land Disputes Tribunal Act, No.18 of 1990 is repealed.
The Urban Areas & Cities Act, 2011
THE URBAN AREAS AND CITIES ACT

No. 13 of 2011

ARRANGEMENT OF SECTIONS

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2—Interpretation.
3—Objects and purposes of the Act.

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5—Criteria for classifying an area as city.
6—Infrastructure in the capital city.
7—Conferment of city status.
8—Application for Conferment of city status.
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10—Eligibility for grant of town status.

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22— Citizen Fora.
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BY RESIDENTS IN AFFAIRS OF THEIR CITY OR URBAN AREA

THIRD SCHEDULE — PREPARATION OF AN INTEGRATED PLAN
THE URBAN AREAS AND CITIES ACT

No. 13 of 2011

Date of Assent: 27th August, 2011

Commencement: See Section 1

AN ACT of Parliament to give effect to Article 184 of the Constitution; to provide for the classification, governance and management of urban areas and cities; to provide for the criteria of establishing urban areas, to provide for the principle of governance and participation of residents and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

Short title and commencement.

1. (1) This Act may be cited as the Urban Areas and Cities Act, 2011.

(2) Subject to subsection (3), this Act shall come into operation after the first elections held under the Constitution.

(3) Part VIII of this Act shall come into operation on the repeal of the Local Government Act (Cap. 265).

Interpretation.

2. (1) In this Act, unless the context otherwise requires—
“board” means the board of a city or municipality constituted in accordance with section 13 and 14 of this Act;

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to urban areas and cities;

“capital city” means a city conferred with the status of a capital city under this Act;

“city” means and area conferred with the status of a city under section 8 of this Act;

“city county” means a city which is also a county;

“Citizen Fora” means a forum for citizens organised for purposes of participating in the affairs of an urban area or a city under this Act;

“transition period” means the period between the commencement of this Act and three years after the first general elections; and

“urban area” means a municipality or a town.

(2) Despite subsection (1), until after the first elections under the Constitution, references in this Act to the expression “Cabinet Secretary” shall be construed to mean “Minister”.

**Objects and purposes of the Act.**

3. The objects and purposes of this Act are to establish a legislative framework for—

(a) classification of areas as urban areas or cities;
(b) governance and management of urban areas and cities;

(c) participation by the residents in the governance of urban areas and cities; and

(d) other matters for the attainment of the objects provided for in paragraphs (a) to (c).

PART II—CLASSIFICATION AND ESTABLISHMENT OF URBAN AREAS AND CITIES

General classification of urban areas and cities.

4. An area may be classified as an urban area or city if it satisfies the criteria set out under this Act or any other written law.

Criteria for classifying an area as city.

5. (1) Subject to subsection (3), an urban area may be classified as a city under this Act if the urban area satisfies the following criteria—

(a) has a population of at least five hundred thousand residents according to the final gazetted results of the last population census carried out by an institution authorized under any written law, preceding the grant;

(b) has an integrated urban area or city development plan in accordance with this Act;

(c) has demonstrable capacity to generate sufficient revenue to sustain its operation;

(d) has demonstrable good system and records of prudent management;
(e) has the capacity to effectively and efficiently deliver essential services to its residents as provided in the First Schedule;

(f) has institutionalised active participation by its residents in the management of its affairs;

(g) has infrastructural facilities, including but not limited to roads, street lighting, markets and fire stations, and an adequate capacity for disaster management; and

(h) has a capacity for functional and effective waste disposal.

(2) Nothing in this section may preclude an area from being conferred with the status of special purpose city under this Act if it has significant cultural, economic or political importance.

Management and infrastructure in the capital city.


(2) The capital city shall be governed and managed in the same manner as a county government.

(3) The capital city shall provide infrastructure necessary to sustain the following—

(a) the seat of the national government;

(b) offices of diplomatic missions;

(c) efficient transport network connecting to rural areas, towns and other local, regional and international cities; and
(d) commerce and industry.

(4) The capital city shall decentralise its functions and the provisions of its services to the extent that it is efficient and practicable to do so.

(5) Subject to subsection (2), the two levels of government shall enter into an agreement regarding the performance of functions and delivery of services by the capital city.

(6) An agreement entered into under subsection (5) may provide for—

(a) the administrative structure of the capital city, subject to the provisions of this Act;

(b) funding of operations and activities of the capital city;

(c) the joint projects to be undertaken by both governments in the capital city;

(d) dispute resolution mechanisms; and

(e) such other information as the two levels of government may determine.

Conferment of city status.

7. The President may, on the resolution of the Senate, confer the status of a city on a municipality that meets the criteria set out in section 5, by grant of a charter in the prescribed form.
Application for conferment of city status.

8. (1) The board of a municipality may, upon a resolution, apply to the county executive committee for consideration for the conferment of city status.

(2) Where the executive committee approves the application, the county governor shall constitute an ad hoc committee to consider the recommendation and advise as appropriate.

(3) The ad hoc committee shall comprise of relevant professionals in good standing nominated by the following institutions—

(a) the Institution of Surveyors of Kenya;

(b) the Kenya Institute of Planners;

(c) the Architectural Association of Kenya;

(d) the Law Society of Kenya;

(e) an association of urban areas and cities;

(f) the Institute of Certified Public Accountants of Kenya; and

(g) the business community.

(4) Where the ad hoc committee under subsection (2) determines that the municipality under review meets the requisite criteria for classification as a city, the county governor shall transmit the recommendation to the county assembly for approval.

(5) Where the county assembly approves the recommendation for conferment of city status to a
municipality under this section, the clerk of the county assembly shall transmit the resolution to the senate for consideration.

(6) Where the senate approves the recommendation, the clerk of the senate shall forward the resolution to the President for conferment of city status on the municipality.

Conferment of municipal status.

9. (1) The county governor may, on the resolution of the county assembly, confer the status of a municipality on a town that meets the criteria set out in subsection (3), by grant of a charter in the prescribed form.

(2) The procedure set out under section 8 (1) to (4) shall apply with necessary modifications to the conferment of municipal status to a town, except that the conferment shall be done by the county governor.

(3) A town is eligible for the conferment of municipal status under this Act if the town satisfies the following criteria—

(a) has a population of at least two hundred and fifty thousand residents according to the final gazetted results of the last population census carried out by an institution authorized under any written law, preceding the grant;

(b) has an integrated development plan in accordance with this Act;

(c) has demonstrable revenue collection or revenue collection potential;
(d) has demonstrable capacity to generate sufficient revenue to sustain its operations.

(e) has the capacity to effectively and efficiently deliver essential services to its residents as provided in the First Schedule;

(f) has institutionalised active participation by its residents in the management of its affairs;

(g) has sufficient space for expansion;

(h) has infrastructural facilities, including but not limited to street lighting, markets and fire stations; and

(i) has a capacity for functional and effective waste disposal.

Eligibility for grant of a town status.

10. (1) The county governor may, in consultation with the committee constituted under section 8(2), confer the status of a town on an area that meets the criteria set out in subsection (2).

(2) An area shall be eligible for the grant of the status of a town under this Act if it has—

(a) a population of at least ten thousand residents according to the final gazetted results of the latest population census carried out by an institution authorized under any written law, preceding the grant;

(b) demonstrable economic, functional and financial viability;
(c) the existence of an integrated development plan in accordance with this Act;

(d) the capacity to effectively and efficiently deliver essential services to its residents as provided in the First Schedule; and

(e) sufficient space for expansion.

PART III—GOVERNANCE AND MANAGEMENT OF URBAN AREAS AND CITIES

Principles of governance and management.

11. The governance and management of urban areas and cities shall be based on the following principles—

(a) recognition and respect for the constitutional status of county governments;

(b) recognition of the principal and agency relationship between the boards of urban areas and cities and their respective county governments including—

(i) the carrying out by a board of such functions as may be delegated by the county government;

(ii) financial accountability to the county government; and

(iii) the governance by each board for and on behalf of the county government;

(c) promotion of accountability to the county government and residents of the urban area or city;
(d) institutionalised active participation by its residents in the management of the urban area and city affairs;

(e) efficient and effective service delivery; and

(f) clear assignment of functions.

Management of cities and municipalities.

12. (1) The management of a city and municipality shall be vested in the county government and administered on its behalf by —

(a) a board constituted in accordance with section 13 or 14 of this Act;

(b) a manager appointed pursuant to section 28; and

(c) such other staff or officers as the county public service may determine.

(2) The board of an area granted the status of a city or municipality under this Act shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;

(c) borrowing money or making investments;

(d) entering into contracts; and
(e) doing or performing all other acts or things for the proper performance of its functions in accordance with this Act or any other written law which may lawfully be done or performed by a body corporate.

(3) The governance and management of a city county shall be in accordance with the law relating to county governments.

Boards of cities.

13. (1) A board of a city shall consist of not more than eleven members, six of whom shall be appointed through a competitive process by the county executive committee, with the approval of the county assembly.

(2) Of the members referred to in subsection (1), at least five shall be nominated by—

(a) an umbrella body representing professional associations in the area;

(b) an association representing the private sector in the area;

(c) a cluster representing registered associations of the informal sector in the area;

(d) a cluster representing registered neighbourhood associations in the area; and

(e) an association of urban areas and cities,

and appointed by the county executive committee with the approval of the county assembly.

(3) The executive committee shall, while appointing
members of the board, ensure gender equity, representation of persons with disability, youth and marginalised groups.

(4) A person shall not be appointed a member of the board unless that person—

(a) is a citizen of Kenya;

(b) is ordinarily resident or has a permanent dwelling in the city;

(c) carries on business in the city; or

(d) has lived in the city for at least five years.

**Boards of Municipalities**

14. The provisions of section 13 shall apply with respect to the board of a municipality except that such board shall comprise nine members of whom four shall be appointed and five elected in the prescribed manner.

**Term of office.**

15. A member of a board shall hold office for a term of five years, on a part-time basis.

**Vacation of office.**

16. A member of a board shall cease to hold office if the member—

(a) is unable to perform the functions of the office by reason of mental or physical infirmity;

(b) is declared or becomes bankrupt or insolvent;

(c) is convicted of a criminal offence and sentenced to a term of imprisonment of six months or more;
(d) resigns in writing to the county governor;

(e) without reasonable cause, the member is absent from three consecutive meetings of the board or committee within one financial year;

(f) is found guilty of professional misconduct by the relevant professional body;

(g) is disqualified from holding a public office under the Constitution;

(h) is convicted of an offence and is sentenced to imprisonment for a term of six months or more;

(i) in any particular case, the member fails to declare his or her interest in any matter being considered or to be considered by the board or committee;

(j) engages in any gross misbehaviour or gross misconduct; or

(k) dies.

Chairperson and vice-chairperson of the Board

17. (1) Subject to subsection (2), there shall be a chairperson and vice-chairperson for each board.

(2) The chairperson and the vice chairperson shall be elected by the members of the board from among themselves during the first meeting of the board, and subsequently whenever a vacancy arises and shall be of opposite gender.

(4) The chairperson and vice chairperson shall hold office for a term of five years.
(5) The chairperson shall—

(a) except in the case of a city county, be the head of the board;

(b) chair meetings of the board;

(c) perform such duties as may be delegated by the board.

(6) The vice chairperson shall, in the absence of the chairperson, perform the functions of chairperson and shall perform such other functions as may be delegated by the chairperson or the board.

Removal from office.

18. (1) A person may be removed from the office of chairperson, vice chairperson or a member of the board on any of the grounds provided under section 16 (a), (b), (c), (e), (f), (g), (h), (i) and (j).

(a) A person may be removed under subsection (1)—

(b) by the county governor;

(c) by the board, supported by the vote of at least two-thirds of the members of the board; or

(d) upon petition by the residents of a city or municipality.

(3) A resident of a city or municipality may file a writing petition with a board for the removal of a chairperson or vice chairperson.
(4) The procedure for the removal or petition for removal of a chairperson or vice chairperson under subsections (1) and (2) shall be provided by regulations.

Filling of vacancy.

19. A vacancy in the office of a chairperson, vice chairperson or a member of the board shall, with necessary modification, be filled in accordance with section 13 or 17 of this Act as the case may be.

Functions of a board.

20. (1) Subject to the provisions of this Act a board of a city or municipality shall—

(a) oversee the affairs of the city or municipality;

(b) develop and adopt policies, plans, strategies and programmes, and may set targets for delivery of services;

(c) formulate and implement an integrated development plan;

(d) control land use, land sub-division, land development and zoning by public and private sectors for any purpose, including industry, commerce, markets, shopping and other employment centres, residential areas, recreational areas, parks, entertainment, passenger transport, agriculture, and freight and transit stations within the framework of the spatial and master plans for the city or municipality as may be delegated by the county government;

(e) as may be delegated by the county government, promote and undertake infrastructural development and services within the city or municipality;
(f) develop and manage schemes, including site development in collaboration with the relevant national and county agencies;

(g) maintain a comprehensive database and information system of the administration and provide public access thereto upon payment of a nominal fee to be determined by the board;

(h) administer and regulate its internal affairs;

(i) implement applicable national and county legislation;

(j) enter into such contracts, partnerships or joint ventures as it may consider necessary for the discharge of its functions under this Act or other written law;

(k) monitor and, where appropriate, regulate city and municipal services where those services are provided by service providers other than the board of the city or municipality;

(l) prepare its budget for approval by the county executive committee and administer the budget as approved;

(m) as may be delegated by the county government, collect rates, taxes levies, duties, fees and surcharges on fees;

(n) settle and implement tariff, rates and tax and debt collection policies as delegated by the county government;
(o) monitor the impact and effectiveness of any services, policies, programmes or plans;

(p) establish, implement and monitor performance management systems;

(q) promote a safe and healthy environment;

(r) facilitate and regulate public transport; and

(s) perform such other functions as may be delegated to it by the county government or as may be provided for by any written law.

(2) The functions performed by the board of a city or municipality under this Act shall, in the case of a town, be performed by a committee appointed by the county governor and approved by the county assembly.

**Powers of boards of cities and municipalities.**

21. (1) Subject to the Constitution and any other written law, the board of a city or municipality shall, within its area of jurisdiction—

(a) exercise executive authority as delegated by the county executive;

(b) ensure provision of services to its residents;

(c) impose such fees, levies and charges as may be authorised by the county government for delivery of services by the municipality or the city;

(d) promote constitutional values and principles;
(e) ensure the implementation and compliance with policies formulated by both the national and county government;

(f) make bye-laws or make recommendations for issues to be included in bye-laws;

(g) ensure participation of the residents in decision making, its activities and programmes in accordance with the Schedule to this Act; and

(h) exercise such other powers as may be delegated by the county executive committee.

(2) Notwithstanding any other provision in this Act, the board of a city or municipality shall exercise such executive authority as may be delegated by the county executive committee for the necessary performance of its functions under this Act.

Citizen Fora.

22. (1) Subject to the Second Schedule, residents of a city, municipality or town may—

(a) deliberate and make proposals to the relevant bodies or institutions on—

(i) the provision of services;

(ii) proposed issues for inclusion in county policies and county legislation;

(iii) proposed national policies and national legislation;

(iv) the proposed annual budget estimates of the county and of the national government;
(v) the proposed development plans of the county and of the national government; and

(vi) any other matter of concern to the citizens;

(b) plan strategies for engaging the various levels and units of government on matters of concern to citizens;

(c) monitor the activities of elected and appointed officials of the urban areas and cities, including members of the board of an urban area or city; and

(d) receive representations, including feedback on issues raised by the county citizens, from elected and appointed officials.

(2) A board shall invite petitions and representations from the Citizen Fora with regard to the administration and management of the affairs within an urban area or city under its jurisdiction.

(3) A board shall make recommendations on the manner in which issues raised at the Citizen Fora, if any, may be addressed and shall accordingly pass the recommendations to the manager for implementation.

(4) The manager shall make a report on the decision made in respect of a petition or presentation made by a citizen fora and reasons for such decision.

**Ordinary and special meetings of a board.**

23. (1) A board shall hold its sittings to transact the business of the board once every three months.

(2) Notwithstanding subsection (1), the chairperson
may, and upon request in writing by at least one-third of the members of the board shall, convene a special meeting to transaction any urgent business of the board.

**Management of information and publicity.**

24. (1) A board shall publish and publicise important information within its mandate affecting the city or urban area.

(2) A request for information in the public interest by a citizen—

(a) shall be addressed to the manager or administrator or such other person as the board or committee may for that purpose designate, and may be subject to the payment of a reasonable fee in instances where the board or committee incurs an expense in providing the information; and

(b) may be subject to confidentiality requirements of the board.

(3) Subject to Article 35 of the Constitution, the board or committee may decline to give information to an applicant where—

(a) the request is unreasonable in the circumstances;

(b) the information requested is at a deliberative stage by the board or committee;

(c) the applicant fails to pay the prescribed fee; or

(d) the applicant fails to satisfy any confidentiality requirements by the board or committee.
(4) The right of access to information under Article 35 of the Constitution shall be limited to the nature and extent specified under this section.

(5) Every member and employee of the board or committee shall sign a confidentiality agreement.

(6) The board or committee shall, in such manner as it considers appropriate, publish a notice for public information specifying—

(a) the location of all its offices; and

(b) its address or addresses, telephone numbers and other means of communication or contact with the board or committee.

**Remuneration of members of a board.**

**25.** The chairperson, vice chairperson and members of a board shall not receive a salary from the board but shall be paid such allowances and benefits as the county executive committee shall, with the approval of the county assembly, and on the advice of the Salaries and Remuneration Commission, determine.

**Committees of a board.**

**26.** A board may—

(a) establish such committees for any general or special purpose which, in its opinion, would regulate or manage its affairs more efficiently and as may be necessary for the performance of its functions under this Act;

(b) delegate to such committee such functions as are necessary for the efficient performance of its duties
in respect to the whole or any part of the area under the jurisdiction of a board; and

(c) include persons who are not members of the board in any committee.

Management of city county.

27. A city county shall be governed and managed in the same manner as a county government.

City or municipal manager.

28. There shall be a city or municipal manager for every city or municipality established under this Act, who shall implement the decisions and functions of the board and shall be answerable to the board.

Appointment of city or municipal manager.

29. A city or municipal manager shall be competitively recruited and appointed by an institution responsible for recruiting public servants in the county.

Qualifications for appointment of city or municipal manager.

30. (1) Subject to Article 232 of the Constitution, a person shall qualify to be appointed as city or municipal manager if the person—

(a) is a citizen of Kenya;

(b) holds a degree from a university recognised in Kenya or its equivalent; and

(c) has proven experience of not less than five years in administration or management either in the public or private sector.
(2) In appointing a manager under subsection (1) the body responsible for county public service shall ensure—

(a) gender equity;

(b) the inclusion of minorities and marginalised communities; and

(c) the person satisfies the requirements of Chapter six of the Constitution.

Governance and management of towns.

31. (1) An area granted the status of a town under this Act shall not be a body corporate.

(2) There shall be an administrator for every town established under this Act.

(3) The administrator of a town shall perform such functions as the committee appointed under section 20 (2) may determine.

(4) Section 29 and 30 of this Act shall apply to the appointment of an administrator.

PART IV—DELIVERY OF SERVICES

Service delivery by a board.

32. (1) Subject to Article 187 (2) (a) of the Constitution, a board shall, on behalf of the county government, deliver such services as may be specified under this Act or any other national or county legislation.

(2) Subject to Article 176 (2) of the Constitution, a city or municipal board may, if it considers it necessary, establish
operational sectors and service delivery entities, with the approval of the county executive committee, for the efficient carrying out of its functions and the delivery of the services within its area of jurisdiction.

(3) Subject to the provisions of this section, a county assembly may legislate on the set up and establishment of service delivery entities.

**Partnership and joint ventures.**

33. (1) A board may, in consultation with the county governor and with the approval of the county assembly, enter into partnership with a utility company either within or outside the county or internationally for the provision of social infrastructural services.

(2) For efficient service delivery, cities and municipalities may jointly provide cross-city and cross-municipality services and may, in that regard jointly finance the services.

(3) A board may, where it is of the opinion that a private sector entity is best able to provide a service, and with the approval of the county assembly, contract a private entity for purposes of delivering the services within its area of jurisdiction.

(4) Where a board decides to contract a private entity for the delivery of services, it shall do so in accordance with the Public Procurement and Disposal Act, 2005 (No. 3 of 2005).

**Service delivery in towns.**

34. The provisions of this Part shall, with necessary modifications, apply in the case of the delivery of services in towns by the town committee.
Objections by residents.

35. A resident may object to any partnership or joint venture under section 33 in accordance with the regulations made under this Act.

PART V—INTEGRATED DEVELOPMENT PLANNING

Objectives of integrated urban areas and city development planning.

36. (1) Every city and municipality established under this Act shall operate within the framework of integrated development planning which shall—

(a) give effect to the development of urban areas and cities as required by this Act and any other written law;

(b) strive to achieve the objects of devolved government as set out in Article 174 of the Constitution;

(c) contribute to the protection and promotion of the fundamental rights and freedoms contained in Chapter Four of the Constitution and the progressive realization of the socio-economic rights;

(d) be the basis for—

(i) the preparation of environmental management plans;

(ii) the preparation of valuation rolls for property taxation;

(iii) provision of physical and social infrastructure and transportation;
(iv) preparation of annual strategic plans for a city or municipality;

(v) disaster preparedness and response;

(vi) overall delivery of service including provision of water, electricity, health, telecommunications and solid waste management; and

(vii) the preparation of a geographic information system for a city or municipality;

(e) nurture and promote development of informal commercial activities in an orderly and sustainable manner;

(f) provide a framework for regulated urban agriculture; and

(g) be the basis for development control.

(2) In addition to the objectives set out in subsection (1), an integrated urban or city development plan shall bind, guide and inform all planning development and decisions and ensure comprehensive inclusion of all functions.

(3) A county government shall initiate an urban planning process for every settlement with a population of at least two thousand residents.

Plan to align to county government plans.

37. (1) A city or urban area integrated development plan shall be aligned to the development plans and strategies of the county governments.
Preparation of integrated city or urban development plans.

38. A city or urban area shall prepare an integrated city or urban area municipal development plan in accordance with the Third Schedule to this Act.

Adoption of an integrated development plan.

39. (1) A board or town committee shall, within the first year of its election, adopt a single, inclusive strategic plan for the development of the city or urban area for which it is responsible.

(2) An integrated development plan adopted by a board or town committee under subsection (1) may be reviewed and amended during the term of the board or committee and shall remain in force until a new integrated urban area or city development plan is adopted by the succeeding board or town committee, but the incoming board or committee shall ensure that the viable projects are continued or completed.

(3) A city or urban area shall, within fourteen days of the adoption of its integrated development plan—

(a) give notice of the adoption of the plan to the public in such manner as a board or committee may determine;

(b) inform the public that copies of or extracts from the plan are available for public inspection at specified places; and

(c) provide a summary of the plan.

Contents of integrated city and urban area development plan.

40. An integrated urban area or city development plan
shall reflect—

(a) a board’s or committee’s vision for the long term development of the city or urban area with special emphasis on the board’s or committee’s most critical development needs;

(b) an assessment of the existing level of development in the city or urban area, including an identification of communities which do not have access to basic services;

(c) the determination of any affirmative action measures to be applied for inclusion of communities referred to under paragraph (b) to access funds from the equilization funds;

(d) the board’s development priorities and objectives during its term in office, including its economic development objectives, community needs and its determination on the affirmative action in relation to the marginalised groups access to services;

(e) a board’s development strategies which shall be aligned with any national or county sectoral plans and planning requirements binding the city or municipality;

(f) a spatial development framework which shall include the provision of basic guidelines for land use management system for the city or municipality;

(g) a board’s operational strategies;

(h) applicable disaster management plans;

(i) a regulated city and municipal agricultural plan;
(j) a financial plan, which shall include budget projection for at least the next three years; and

(k) the key performance indicators and performance targets.

Submission of integrated cities and municipal development plan to the county governor.

41. (1) The manager or administrator shall submit to the executive committee, a copy of the integrated development plan as adopted by the board or committee within twenty one days of the adoption or amendment.

(2) The copy of the integrated development plan submitted to the county executive committee shall be accompanied by—

(a) a summary of the process of its formulation plan provided under this Part; and

(b) a statement that the process has been complied with, together with any explanations that may be necessary to clarify the statement.

(3) The county executive committee shall, within thirty days of receipt of a copy of the plan—

(a) consider the integrated development plan and make recommendations; and

(b) submit the plan to the county assembly for its approval.

Annual review of integrated development plan.

42. A city or municipal board shall review its integrated
development plan annually to assess its performance in accordance with performance management tools set by it under this Part, and may amend the plan where it considers it necessary.

PART VI—FINANCIAL PROVISIONS

Funds of a board.

43. (1) The funds of a board shall consist of—

(a) monies allocated by a county assembly for the purposes of the management and service delivery of the board;

(b) monies or assets that may accrue to the board in the course of the exercise of its powers or the performance of its functions under this Act; and

(c) all monies or grants from any other legitimate source provided or donated to the board.

(2) Where an urban area or city has a joint venture with another entity, the monies allocated for the joint venture shall be determined by a joint budget.

(3) No payment shall be made out of the funds of a board or town committee unless it has been provided for in the approved annual or revised or supplementary estimates of expenditure and authorized by a board.

Financial year.

44. The financial year of a board or town committee shall be the period of twelve months ending on the thirtieth June in each year.
Annual estimates.

45. (1) Three months before the commencement of each financial year, a board or town committee shall cause to be prepared estimates of the revenue and expenditure of a board or town committee for that year.

(2) The annual estimates shall make provision for all the estimated revenue and expenditure of the board for the financial year to which it relates.

(3) The annual estimates shall be tabled before the board or town committee for adoption and approval.

(4) The annual estimates approved by the board or town committee under subsection (3) shall be submitted to the county governor for submission to the county assembly for its approval.

Accounts and audit.

46. (1) The board or town committee shall cause to be kept all proper books and records of account of its income, expenditure, assets and liabilities.

(2) Within a period of three months after the end of each financial year, the board or town committee shall submit to the County Executive Committee its accounts for that year for transmission to the Auditor-General together with—

(a) a statement of the income and expenditure of a board for that year; and

(b) a statement of the assets and liabilities of a board on the last day of that financial year.

(3) The Auditor-General shall prepare a financial audit
as required under the Public Audit Act, 2003 (No. 12 of 2003) or its successor and shall forward a copy of the report to the relevant board and the County Executive Committee in respect of which the audit report is made.

**Audit report to be laid before board or town committee.**

47. (1) As soon as is practicable, and in any event not later than thirty days from the date of receipt of the audit report together with the annual statements and abstracts of accounts, the manager or administrator shall—

(a) lay the documents before the board or town committee for consideration; and

(b) make them available to any resident of the area within the jurisdiction of the board, upon application and payment of the prescribed fee.

(2) Where the manager or the administrator of a board fails to table the report as required under this section, that report shall be laid by any other person authorised by the county governor.

**Display of audited financial statement.**

48. The board shall cause its audited annual financial statement to be posted in full in a conspicuous place in the board’s offices, or in two widely circulated newspapers and, on the board’s website.

**Pension Schemes.**

49. All members and officers of a board shall, on the commencement of this Act, subscribe to an existing pension scheme approved by the Retirement Benefits Authority.
PART VII—MISCELLANEOUS PROVISIONS

Disclosure of personal interest by officers.

50. If it comes to the knowledge of an officer employed by a board that a bargain, contract or arrangement in which he or she has any direct or indirect pecuniary interest (other than a bargain, contract or arrangement to which he or she is a party) has been or is proposed to be made or entered into by the board, that officer shall as soon as practicable give notice in writing to the board disclosing the fact that he or she has interest therein.

Board to furnish county executive with copies of proceedings.

51. Every board shall furnish the county executive committee and any other person as the county executive committee may designate, with certified copies of—

(a) any proceedings or minutes of the board or its committees within twenty one days after the confirmation of the minutes;

(b) records of any of its accounts; and

(c) reports, statistics and documents as the county executive committee may require.

Protection against personal liability.

52. (1) No act, matter or thing done or omitted to be done by—

(a) the chairperson or vice chairperson of a city or municipality;

(b) any member of a board or its management or committee;
(c) any member of staff or other person in the service of city or municipal board; or

(d) any person acting under the direction of a board,

shall, if that act, matter or thing was done or omitted to be done in good faith in the execution of a duty or under direction, render that member or person personally liable to any civil action, claim or demand.

(2) Notwithstanding the provisions of subsection (1), a person who misappropriates, or authorises the use of funds contrary to existing law or instructions shall be accountable for any loss arising from that use and shall be required to make good the loss even if that person has ceased to hold office.

Regulations.

53. (1) The Cabinet Secretary may make regulations, for the better carrying out of the provisions of this Act, or for prescribing anything which is required to be prescribed under this Act.

(2) Regulations made under this section shall be tabled before the Senate for approval, and shall not take effect until such approval is obtained.

PART VIII—TRANSITIONAL PROVISIONS

Assessment and classification of existing urban areas and cities.

54. (1) During the transition period assessment shall be undertaken on the existing urban areas and cities in order to ascertain whether they meet the criteria for classification as urban areas or cities under this Act, and shall be classified
Rights and liabilities.

55. All rights, assets and liabilities accrued in respect of the properties vested in the local authorities established under the Local Government Act (Cap. 265) which shall stand repealed after the first election under the Constitution shall be dealt with as provided by law.

Existing bye-laws and orders of local authorities.

56. All directions, resolutions, orders and authorizations given by by-laws made, and licenses or permits issued by the local authorities established, under the Local Government Act and subsisting or valid immediately before the commencement of this Act shall be deemed to have been given, issued or made by the boards established pursuant to this Act, as the case may be, until their expiry, amendment or repeal.
Staff, officers, etc.

57. (1) Every person who, immediately before the commencement of this Act was an officer, agent or member of staff appointed, seconded or otherwise employed by a local authority shall, on the commencement of this Act be seconded or otherwise deployed as may be provided by law.

Existing contracts, etc.

58. (1) Any act, matter or thing lawfully done by any local authority before the commencement of this Act and any contract, arrangement, agreement, settlement, trust, bequest, transfer, division, distribution or succession affecting any service delivery, trade of any form, sale or dealings on land or any other matter affecting assets, liabilities or property belonging to any local authority whether moveable, immovable or intellectual property shall, unless and until affected by the operation of this Act, continue in force and be vested in a body established by law.

Pending actions and proceedings.

59. Any legal right accrued, cause of action commenced in any court of law or tribunal established under any written law in force, or any defence, appeal, or reference howsoever filed by or against any local authority shall continue to be sustained in the same manner in which they were prior to the commencement of this Act against a body established by law.

Municipalities of Mombasa and Kisumu.

60. Notwithstanding any other provisions of this Act, the municipalities of Mombasa and Kisumu existing immediately before the commencement of this Act shall be deemed to be cities established under this Act.
SCHEDULES

FIRST SCHEDULE (s. 5)

CLASSIFICATION OF CITIES AND TOWNS BY SERVICES

In classifying an area as a city, municipality or town, regard shall be had to the ability to provide the following services:

City—(Population at least 500,000)

Planning and Development Control
Traffic Control and Parking
Water and Sanitation
Street Lighting
Outdoor Advertising
Cemeteries and Crematoria
Public Transport
Libraries
Storm Drainage
Ambulance Services
Heath Facilities
Fire Fighting and Disaster Management
Control of Drugs
Sports and Cultural Activities
Electricity and Gas Reticulation
Abattoirs
Refuse Collection
Solid waste management
Air pollution
Child Care Facilities
Pre-Primary Education
Local Distributor Roads
Conference Facilities
Community Centres
Five Star Hotel
Guest Houses
National Hospital
Referral hospital
County Hospital
University
Constituent University Campuses
Polytechnic
Training Institution
National School
County School
Stadium
National Stadium
International Airport
Airport
Airstrip
National Theatre
Theatre
Library Service
Administrative Seat
Financial Hub
Diplomatic Hub
Consulate
Museum
Historical Monument
Fire Station
Emergency Postal services
National TV station
National Radio Station
Regional Radio Station
Community Radio
Casinos
Funeral Parlour
Cemetery
Recreational Parks
Management of Markets
Marine Water front
Animal control and welfare
Religious Institution
Municipality—(Population at least 250,000)

Planning and Development Control
Traffic Control and Parking
Water and Sanitation
Street Lighting
Outdoor Advertising
Cemeteries and Crematoria
Public Transport
Libraries
Storm Drainage
Ambulance Services
Heath Facilities
Fire Fighting and Disaster Management
Control of Drugs
Sports and Cultural Activities
Electricity and Gas Reticulation
Abattoirs
Refuse Collection
Solid waste management
Air noise
Child Care Facilities
Pre-Primary Education
Local Distributor Roads
Conference Facilities
Community Centres
Hotel Homestays
Guest Houses
County Hospital
Constituent University Campuses
Polytechnic
Training Institution
National School
County School
Municipal Stadium
Stadium
Airport
Airstrip
National Theatre
Theatre
Library Service
Administrative Seat
Financial Hub
Museum
Historical Monument
Fire Station
Emergency Preparedness
Postal services
National TV station
National Radio Station
Regional Radio Station
Community Radio
Casinos
Funeral Parlour
Cemetery
Recreational Parks
Management of Markets
Marine Water front
Animal control and welfare
Religious Institution
Organised Public Transport

Town—(Population at least 10,000)

Street Lighting
Cemeteries and Crematoria
Libraries
Health Facilities
Sports and Cultural Activities
Abattoirs
Refuse Collection
Solid waste management
Air noise
Child Care Facilities
Pre-Primary Education
Community Centres
Guest Houses
Homestays
Polytechnic
Training Institution
County School
Airstrip
Unclassified roads
Museum
Historical Monument
Postal services
Regional Radio Station
Community Radio
Funeral Parlour
Cemetery
Recreational Parks
Management of Markets
Marine Water front
Animal control and welfare
Religious Institution
Rights and duties of residents.

1. (1) Subject to paragraph (2), residents of a city or urban area have the right to—

   (a) contribute to the decision-making processes of the city or urban area by submitting written or oral presentations or complaints to a board or town committee through the city or municipal manager or town administrator;

   (b) prompt responses to their written or oral communications;

   (c) be informed of decisions of a board, affecting their rights, property and reasonable expectations;

   (d) regular disclosure of the state of affairs of the city or urban area, including its finances;

   (e) demand that the proceedings of a board or committee and its committees or sub committees be—

       (i) conducted impartially and without prejudice; and

       (ii) untainted by personal self-interest;

   (f) the use and enjoyment of public facilities; and
(g) have access to services which the city or municipality provides.

**Participation by residents.**

2. (1) A city or urban area shall develop a system of governance that encourages participation by residents in its affairs, and shall for that purpose—
(a) create appropriate conditions for participation in—

(i) the preparation, implementation and review of the integrated development plan;

(ii) the establishment, implementation and review of its performance management system;

(iii) the monitoring and review of its performance, including the outcomes and impact of its performance;

(iv) the preparation of its budget; and

(v) making of strategic decisions relating to delivery of service;

(b) contribute to building the capacity of—

(i) the residents to enable them participate in the affairs of the city or urban area; and

(ii) members of the board or town committee and staff to foster community participation;

(c) apply its resources, and allocate funds annually as may be appropriate for the implementation of paragraphs (a) and (b); and

(d) establish appropriate mechanisms, processes and procedures for—

(i) the receipt, processing and consideration of petitions and complaints lodged by residents;

(ii) petitions and public comments procedures, when appropriate;
(iii) notification of public meetings and hearings organised by a board or town committee;

(iv) consultative sessions with locally recognized resident organisations; and

(v) reporting to the residents.

(2) The provisions of paragraph (1) shall not be construed as permitting interference with a board’s or town committee’s right to govern and exercise its functions.

(3) When establishing mechanisms, processes and procedures under subsection (1), the city or urban area shall take into account the special needs of—

(a) people who cannot read or write;

(b) people with disabilities;

(c) youth;

(d) gender equity; and

(e) minority and marginalised groups.

**THIRD SCHEDULE**

*PREPARATION OF AN INTEGRATED PLAN*

In the preparation of the integrated urban area or city development plan a city or urban area shall provide for—
(a) an assessment of the current social, cultural, economic and environmental situation in its area of jurisdiction;

(b) a determination of community needs and aligning them to the requirements of the Constitution;

(c) protection and promotion of the interests and rights of minorities and marginalized groups and communities;

(d) a shared vision for its development and that of the county as a whole;

(e) an audit of available resources, skills and capacities;

(f) prioritization of the identified needs in order of urgency and long-term importance;

(g) integrated frameworks and goals to meet the identified needs;

(h) strategies to achieve the goals within specific time frames;

(i) specific implementation programmes and projects to achieve intended goals; and

(j) performance management tools to measure impact and performance and make appropriate corrections;

(k) linkage, integration and coordination of sector plans;

(l) development control; and

(m) any other necessary matter.