



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY


THIRTEENTH PARLIAMENT – SECOND SESSION – 2023

THE DEPARTMENTAL COMMITTEE ON LANDS

REPORT ON THE STATUTE LAW (MISCELLANEOUS AMENDMENT) BILL  
NATIONAL ASSEMBLY NO. 60 OF 2022

Published by:-

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Clerk's Chambers  
Parliament Buildings  
NAIROBI

 THE NATIONAL ASSEMBLY PAPERS L.AJO	
DATE: 11 APR 2023	DAY: <u>TUESDAY</u>
TABLED BY: <u>HON. GEORGE MURUGARA</u> <u>MP, CHAIRPERSON</u> <u>SHAC</u>	February, 2023
CLERK AT THE TABLE: <u>KATHER NGINYO</u>	

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## PART I

### 1.0 PREFACE

#### 1.1 Introduction

##### Legal Provision on Public Participation

1. Article 118 (1) (b) of the Constitution of Kenya provides as follows —

*“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.”*

2. Standing Order 127(3) provides that —

*“The Departmental Committee to which a Bill is committed shall facilitate public participation on the Bill through an appropriate mechanism, including—*

- (a) inviting submission of memoranda;
- (b) holding public hearings;
- (c) consulting relevant stakeholders in a sector; and
- (d) Consulting experts on technical subjects.

5. Standing Order 127(3A) further provides that—

*“The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House.”*

##### Methodology used by the Committee in Public Participation

6. The Statute Law (Miscellaneous Amendments) Bill, 2022, National Assembly Bills No. 60 of 2022 was published on 1<sup>st</sup> December 2022. Pursuant to Standing Order 127(1), the Bill was committed to the Departmental Committee on Lands for consideration having been read a First Time on 8<sup>th</sup> December 2022.
7. Pursuant to the aforementioned provisions of the Constitution and Standing Orders, the Committee through local daily newspapers of Friday, 16<sup>th</sup> December 2022 published an advertisement inviting the public to submit memoranda. Further, in a letter dated 9<sup>th</sup> December 2022, the Committee invited various stakeholders including the Office of the Attorney General, Kenya Law Reform Commission to submit memorandum on the Bill.
8. The Report contains the analysis of the public submissions on the Bill, written submission received from the public noting general comments in support or against the amendments and the list of institutions that submitted their memoranda.
9. The Report also contains an adoption schedule, a copy of the newspaper advertisements of Monday, 9<sup>th</sup> December 2022 inviting the public to submit memoranda on the Bill and a

letter inviting the relevant stakeholders for memoranda and the minutes of the Committee sittings during the consideration of the Bill.

10. The Bill intends to amend: The Land Consolidated Act (Cap 283), the Land Adjudication Act (Cap 284), and, the National Land Commission Act (No 5 of 2012). The legislation falls under the mandate of the Committee.

**a. Mandate of the Committee**

1. The Departmental Committee on Housing, Urban Planning and Public Works is one of the twenty Departmental Committees of the National Assembly established under *Standing Order 216* whose mandates pursuant to the *Standing Order 216 (5)* are as follows:

- i. To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- ii. To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;
- iii. on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;
- iv. To study and review all legislation referred to it;
- v. To study, assess and analyze the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
- vi. To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;
- vii. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);
- viii. To examine treaties, agreements and conventions;
- ix. To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- x. To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and

- xi. To examine any questions raised by Members on a matter within its mandate.
2. In executing its mandate, the Committee oversees the State Department for Lands and the National Land Commission.

**b. Subjects under the Committee**

3. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider matters in relation to the subject of lands and settlement.
4. In executing its mandate, the Committee oversees the Ministry of Lands and the National Land Commission.

**c. Membership of the Committee**

5. The Departmental Committee on Lands was constituted by the House in December 2017 and comprises of the following Members-

**Chairperson**

Hon. Joash Nyamache Nyamoko, M.P  
North Mugirango Constituency

**UDA**

**Vice-Chairperson**

Hon. Jayne Kihara, MP  
Naivasha Constituency

**UDA**

**Members**

Hon. Dr. Rachael Kaki Nyamai, MP  
Kitui South Constituency

**Jubilee**

Hon. Dr. Gideon Ochanda, MP  
Bondo Constituency

**ODM**

Hon. Mathias Robi Nyambabe, MP  
Kuria West Constituency

**UDA**

Hon. George Koimburu, MP  
Juja Constituency

**UDA**

Hon. Joseph Hamisi Denar, MP  
Nominated

**ANC**

Hon. Esther M. Passaris, MP  
Women Representative

Nairobi County

**ODM**

Hon. Ali Wario Guyo, MP  
Garsen Constituency

**ODM**

Hon. Omar Mwinyi, MP  
Changamwe Constituency

**ODM**

Hon. Paul Katana, MP  
Kaloleni Constituency  
ODM

Hon. Thaddeus Nzambia, M.P.  
Kilome Constituency  
WIPER

Hon. Josses Lelmengit, MP  
Emgwen Constituency  
UDA

Hon. Anthony Kenga Mupe, MP  
Rabai Constituency  
PAA

Hon. Gachoki Gitari, MP  
Kirinyaga Central Constituency  
UDA

#### **Committee Secretariat**

6. The Committee secretariat is composed of the following technical staff;

Mr. Daniel Mutunga  
Principal Clerk Assistant I/Lead Clerk

Ms. Angeline Naserian Lotuai  
Clerk Assistant II

Mr. Sidney Lugaga  
Senior Legal Counsel

Dr. Benjamin Ngimor  
Senior Fiscal Analyst

Ms. Audrey Ogutu  
Legal Counsel II

Mr. Collins Namulen  
Fiscal Analyst III

Mr. Salat Abdi  
Senior Serjeant-at-Arms

Ms. Noel Chelagat  
Media Relations Officer II

Mr. Eugene Apaa  
Research Officer II

Ms. Lydia Shalom  
Research Officer III

Ms. Brenda Michira  
Research Assistant III

Ms. Yasmin Hassan  
Serjeant-at-Arms

## PART II

### 2.0 BRIEFING BY THE LEGAL COUNSEL ON THE STATUTE LAW (MISCELLANEOUS AMENDMENT) BILL NATIONAL ASSEMBLY NO. 60 OF 2022 FROM THE SUBMISSIONS FROM THE NATIONAL LAND COMMISSION AND THE STATE DEPARTMENT FOR LANDS AND PHYSICAL PLANNING

7. The Committee was briefed by the Legal Counsel that the proposals include:
  - a) A proposal to amend the Land Consolidation act to harmonize its provisions with the functions of the Director of Public Prosecution under Article 157(2) of the Constitution;
  - b) A proposal to amend Land Adjudication Act to harmonize its provisions with the functions of the Director of Public Prosecution under Article 157(2) of the Constitution.
  - c) A proposal to amend the National Land Commission Act (No 5 of 2012 section 33 to insert sub-section (IA) The Commission shall submit the annual report in subsection (1) to the President and the National Assembly within six months after the end of the year to which it relates.
8. The Committee was informed that two submissions had been received from the State Department of Lands and Physical Planning and the National Land Commission. The submissions support the proposals and do not propose any changes.
9. The proposed amendments are outlined as follows:

Clause	Act	Sponsor	Section to amend	Justification
14(6)(b)	The Land Consolidation Act (Cap 284)	State Department for Lands and Physical Planning  National land Commission	Delete the expression "Attorney-General" and substitute therefor with the expression "Director of Public Prosecutions".	This Proposal will bring the provision of the Act into conformity with Article 157 of the Constitution.  The functions of the Office of the Director of Public Prosecutions established under Article 157 include the institution and undertaking of criminal proceedings,
S. 33	The Land Adjudication Act (Cap 284)	State Department for Lands and Physical Planning	Delete the expression "Attorney-General" and substitute therefor with the expression "Director of Public Prosecutions".	This Proposal will bring the provision of the Act into conformity with Article 157 of the Constitution.



		National Land Commission		The functions of the Office of the Director of Public Prosecutions established under Article 157 include the institution and undertaking of criminal proceedings, taking over, continuation and discontinuation of criminal proceedings.
No.5	The National Land Commission Act (No 5 of 2012).	State Department for Lands and Physical Planning  National Land Commission	Insert the following new subsection immediately subsection (1)-  (IA) The Commission shall submit the annual report in subsection (1) to the President and the National Assembly <b>within six months</b> after the end of the year to which it relates.	Article 254 of the Constitution provides that each commission and holder of a constitutional office shall submit a report and to Parliament and at any time the President, the National Assembly or Senate shall require a commission or holder of an independent office to submit a report on a particular issue.  Commissions and independent offices that have fixed timeliness for submission of their annual reports: <ul style="list-style-type: none"> <li>• Section 24 of the Independent Electoral and Boundaries Commission Act (No 9 of 2011)- 3 months at the end of the financial year;</li> <li>• Section 44 of the Parliamentary Service Act (No 22 of 2019)- 3 months at the end of each financial year;</li> <li>• Section 90 of the Public Service Commission Act, 2017- 3 months at the end of each financial year.</li> </ul>



## **PART III**

### **3.0 COMMITTEE OBSERVATIONS**

10. The Committee made the following observations.

#### **The Land Consolidation Act (Cap 284)**

That deletion of the Attorney General has been occasioned by the changes in the Constitution and will bring conformity with Article 157 of the Constitution, since the functions of the Office of the Director of Public Prosecutions established under Article 157 include the institution and undertaking of criminal proceedings, taking over, continuation and discontinuation of criminal proceedings.

#### **The Land Adjudication Act (Cap 284)**

That deletion of the Attorney General has been occasioned by the changes in the Constitution and will bring conformity with Article 157 of the Constitution, since the functions of the Office of the Director of Public Prosecutions established under Article 157 include the institution and undertaking of criminal proceedings, taking over, continuation and discontinuation of criminal proceedings.

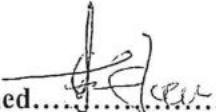
#### **The National Land Commission Act (No 5 of 2012).**

On submission of the annual report by the National land Commission in subsection (1) to the President and the National Assembly **within six months** after the end of the year to which it relates. The Committee noted that Commissions and independent offices that have fixed timeliness for submission of their annual reports

### **4.0 COMMITTEE RECOMMENDATION**

Having considered the amendments proposed and submissions from the public, the Departmental Committee on Lands **resolves** to support the amendments proposed under Statute Law (Miscellaneous Amendment) Bill, National Assembly No. 60 of 2022—

1. to section 14(3) (b) of the Land Consolidation Act (Cap 284),
2. to section 33 of the Land Adjudication Act (Cap 284), and
3. to section 90 of the National Land Commission Act (No 5 of 2012).

Signed.......... Date: 9<sup>th</sup> February 2023

Hon. Joash Nyamoko Nyamache, M.P  
(CHAIRPERSON)



THE NATIONAL ASSEMBLY  
13TH PARLIAMENT - FIRST SESSION (2022)  
COMMITTEE ON LANDS  
ADOPTION LIST

AGENDA: Report on Statute Law Miscellaneous Bill

DATE: 9th February 2023.

No.	MEMBER	SIGNATURE
1. <input checked="" type="checkbox"/>	Hon. Nyamoko Joash Nyamache, MP	
2.	Hon. Kihara Jayne Wanjiru Njeri, MP	
3. <input checked="" type="checkbox"/>	Hon. Rachael Kaki Nyamai, CBS, MP	
4.	Hon. Ogolla Gideon Ochanda, MP	
5.	Hon. Shimbwa Omar Mwinyi, MP	
6.	Hon. Robi Mathias Nyamabe, MP	
7.	Hon. Passaris Esther Muthoni, MP	
8.	Hon. Gitari Joseph Gachoki, MP	
9.	Hon. Guyo Ali Wario, MP	
10. <input checked="" type="checkbox"/>	Hon. Nzambia Thuddeus Kithua, MP	
11. <input checked="" type="checkbox"/>	Hon. Ndung'u George Koimburi, MP	
12.	Hon. Mupe Anthony Kenga, MP	
13.	Hon. Katana Paul Kahindi, MP	
14.	Hon. Joseph Hamisi Denar, MP	
15. <input checked="" type="checkbox"/>	Hon. Lelmengit Josses Kiptoo Kosgey, MP	

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REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

13<sup>TH</sup> PARLIAMENT - SECOND SESSION, 2022

DIRECTORATE OF DEPARTMENTAL COMMITTEES

**MINUTES OF THE 5<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
LANDS HELD ON THURSDAY 9<sup>TH</sup> FEBRUARY, 2023 IN 2<sup>ND</sup> FLOOR  
CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 AM**

**MEMBERS PRESENT**

1. Hon. Joash N. Nyamoko, MP - Chairperson
2. Hon. Jayne Kihara, MP - Vice-Chairperson
3. Hon. Ali Wario, MP
4. Hon. Joseph Gachoki Gitari, MP
5. Hon. (Eng.) Thuddeus Nzambia, MP
6. Hon.(Dr.) Ochanda Gideon, MP
7. Hon. Paul Katana, MP
8. Hon. Josses Lelmengit, MP
9. Hon. George Koimburi, MP

**ABSENT WITH APOLOGY**

1. Hon. Rachael Kaki Nyamai, CBS, MP
2. Hon. Shimbwa Omar Mwinyi, MP
3. Hon. Mathias N. Robi, MP
4. Hon. Esther Passaris, MP
5. Hon. Anthony Kenga Mupe, MP
6. Hon. Joseph Hamisi Denar, MP

**IN-ATTENDANCE - NATIONAL ASSEMBLY  
SECRETARIAT**

- |                         |   |                             |
|-------------------------|---|-----------------------------|
| 1. Mr. Daniel Mutunga   | - | Principal Clerk Assistant I |
| 2. Ms. Naserian Lotuai  | - | Second Clerk assistant      |
| 3. Ms. Audrey Ogutu     | - | Legal Counsel II            |
| 4. Ms. Noelle Chelagat  | - | Media Relations Officer II  |
| 5. Mr. Collins Namullen | - | Fiscal Analyst III          |
| 6. Ms. Brenda Michira   | - | Research Assistant III      |
| 7. Ms. Lydia Shalom     | - | Research Assistant III      |
| 8. Ms. Yasmin Hassan    | - | Serjeant-at-Arms III        |
| 9. Mr. Kelvin Lengasi   | - | Audio Officer III           |

**MIN/NO./NA/DC-LANDS/2022/021: PRELIMINARIES**

The Chairperson called the meeting to order at twenty eight minutes past ten o'clock. A prayer was said. He welcomed the Members to the meeting and informed that the agenda for the meeting was briefing by the Fiscal Analyst on the proposed Supplementary Estimates No.1 for

FY 2022/2023. The Agenda of the meeting was adopted after having been proposed by Hon. Ali Wario, MP and seconded by Hon. Thuddeus Nzambia, MP.

**MIN/NO./NA/DC-LANDS/2022/022: BRIEFING BY THE FISCAL ANALYST ON THE PROPOSED SUPPLEMENTARY ESTIMATES NO.1 OF FY 2022/2023**

The Fiscal Analyst from the Parliamentary Budget Office made the following presentation:

The two MDAs under the Committee's purview had received less than 50 percent of the net approved estimates. The Ministry of Lands and Physical Planning registered exchequer releases of 25% while the National Land Commission registered exchequer releases of 27%.

<b>Vote</b>		<b>Approved Net Estimates (Ksh. millions)</b>	<b>Exchequer Issues as at 31<sup>st</sup> Dec 2022 (Ksh. millions)</b>	<b>Percentage of Exchequer Issues to Net Estimates</b>
<b>Ministry of Lands and Physical Planning</b>	<b>Total</b>	<b>5,928</b>	<b>1,507</b>	<b>25%</b>
	Recurrent	3,306	1096	33%
	Development	2,621	411	16%
	<b>Total</b>	<b>1,558</b>	<b>413</b>	<b>27%</b>
<b>National Land Commission</b>	Recurrent	1,468	413	28%
	Development	90.3	0	0
	<b>Total</b>	<b>90.3</b>	<b>0</b>	<b>0</b>

**Ministry of Lands and Physical Planning**

In the proposed supplementary No.1, the Ministry's approved estimates have been revised to Ksh. 4.4 billion from Ksh. 5.9 billion. This reflects a decrease of Ksh. 1.6 billion comprising reductions of KSh.322.4 million in the Current expenditure and KSh.1.23 billion in the Capital expenditure. This is on account of rationalization of expenditure and reduction of excess provision for salaries.

Capital projects with reduced allocations under the Ministry may not be completed within set timelines in this regard. This includes all projects carried out by the Ministry, with the exception of the Digitization of Land Registries project.

He further informed the meeting that effects of the reduction of the budget will result in the following:

- I. Processing and registration of title deeds will be reduced from 330,000 to 200,000 with the reduction by Ksh.622million.
- II. Renovation of Land offices has been reduced from 14 to 2 offices after reduction of funds by 17 million.

- III. Survey, Inspection & Maintaining National & International Boundaries, the number of kilometers has been reduced from 50km to 0km, with no allocation.
- IV. On Development of Geo spatial data, reduced from 50 to 5 topographical maps and the allocation has been reduced from by 17million.
- V. Settlement of the Landless the allocation has been reduced from by 210 million hence reduction from 80,000 to 3,000 households.
- VI. Geo-referencing of Land Parcels the allocation by 45 million therefore, purchase of land has been reduced from 70,000 to 10,000 land parcels.
- VII. The National Physical Planning: the physical plans has been reduced from 12 to 2 and the allocation has been reduced by 75million.
- VIII. National Land Value Index, the number of counties covered therefore has reduced from 47 to 6 counties by a reduction of 53 million.
- IX. On the Development of Hydrographic Database the bathy metrics maps and nautical charts have reduced from 5 to 1, and by a reduction of 8million.
- X. Infrastructure Improvement in Kenya Institute of Survey and Mapping the allocation has reduced by 63 million causing of construction of tuition block from 30 to 10.

### **National Land Commission**

In the proposed supplementary No.1, the Commission's approved estimates have been revised to Ksh. 1.47 billion from Ksh. 1.5 billion. This reflects a decrease of Ksh. 90.9 million comprising reductions of Ksh. 0.6 million in the Current expenditure and Ksh.90.3 million in the Capital expenditure.

He explained that the change is on account of rationalization of expenditure and additional funds to cater for settlement of a Court award. The Commission should provide detailed information on the court award that has been designated for payment as well as the status of additional legal expenses that are pending.

### **Summary of Salient Issues**

The following are salient issues presented to the Committee:

1. **Decrease in gross Capital Estimates:** The revision in the Ministry's gross capital estimates amount to Ksh. 1,233 million, representing a decrease of 47 percent from the approved gross capital estimates for the FY 2022/23. As result, all ongoing projects under the Ministry's purview with the exception of the Digitization land registries project, will have a reduction in allocated funds from the approved capital estimates. As such, the projects may not be completed within the set timelines.
2. **Effects of Budget variations on strategic objectives:** The key strategic areas include digitization of land records and processes; National titling programme; Policy, Legal and Institutional reforms and decentralization of Land administration services and processes. With relatively similar annual budget cuts and austerity measures implemented by the



National Treasury, the set timelines for the completion of projects may not be achieved therefore hampering the Ministry's ability to meet its objective.

3. **Pending bills** – As at 30<sup>th</sup> September, the ministry of lands and physical planning had pending bills amounting to Ksh. 567 million. On the other hand, the National Land Commission had pending bills totaling Ksh. 531 million. No clear provision has been made for the settlement of this legal related pending bills which may occasion incompleteness of programs and projects if treated as first charge as required by the law.
4. **Revenue Collection** - the Ministry had not begun using a digital online platform for all revenue collection transactions by the 30<sup>th</sup> of May 2022, as agreed during the consideration of the 2021/2022 Budget Estimates. A fully digital revenue collection could seal leakages and improve the achievement of set targets.

**MIN/NO.NA/DC-LANDS/2022/023: ADOPTION OF STATUTE LAW MISCELLANEOUS NO.60 OF 2022**

The Report on Statute Law Miscellaneous No.60 of 2022 was adopted without any changes having been proposed by Hon. Gideon Ochanda, MP and seconded by Hon. Ali Wario, MP.

**MIN/NO.NA/DC-LANDS/2022/024: ANY OTHER BUSINESS**

The secretariat was tasked to write to the Ministry on the additional issues that were raised during induction and should be addressed in the upcoming retreat.

**MIN/NO.NA/DC-LANDS/2022/025: ADJOURNMENT**

There being no other business, the meeting was adjourned at twenty minutes past noon. The next meeting will be held on Thursday 16<sup>th</sup> February 2023 at 8.00am, venue to be communicated in due course.

Signed.....

**HON. JOASH N. NYAMOKO, MP  
(CHAIRPERSON)**

Date..... 13/02/2023 .....

Lands

# KENYA LAW REFORM COMMISSION



"Vibrant Agency for Responsive Law Reform"

Telegram: "LAWREFORM" NAIROBI  
Telephone: Nairobi, +254-20-2241186/2241201  
Fax: +254-20-2225786  
Email: [vw.info@klrc.go.ke](mailto:vw.info@klrc.go.ke)

When replying please quote

Ref. No. **KLRC/RES/93 VOL.VI (38)**

and Date

The Clerk of National Assembly  
Clerk's Chambers  
National Assembly  
Parliament Building  
P.O Box 41842 -00100  
Nairobi

(Attn: Mr. Jeremiah W. Ndombi, MBS)

Dear

*Jerem,*

**RE: INVITATION TO SUBMIT VIEWS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILLS NO.60 OF 2022)**

We acknowledge with thanks receipt of your letter Ref.No.NA/DDC/JLAC/2022/010 dated 20<sup>th</sup> December, 2022 on the above subject.

Enclosed herein please find the Commission's comments on Statute Law (Miscellaneous Amendments) Bill (National Assembly Bills No.60 Of 2022) for further action.

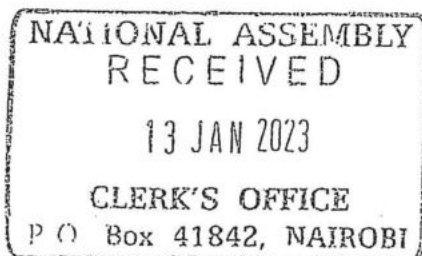
As always, we are grateful for your continued support and collaboration.

Yours

*Sincerely,*  
*Joash Dache*

Joash Dache, MBS  
Secretary/Chief Executive Officer

Encl.



KENYA LAW REFORM COMMISSION  
REINSURANCE PLAZA  
3RD FLOOR

TAIFA ROAD

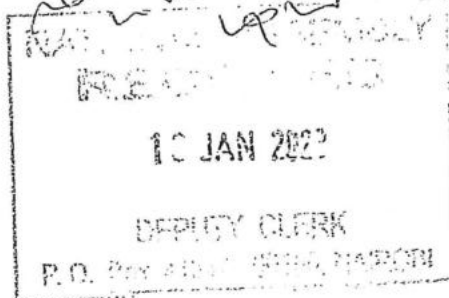
P.O. Box 34999-00100

NAIROBI, KENYA

12<sup>th</sup> January, 2023

*Likan secured*

*make copies and distribute to see relevant committees involved*



10 JAN 2023

DEPUTY CLERK

P.O. Box 41842, NAIROBI







## THE KLRC COMMENTS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2022

### I. INTRODUCTION

This memorandum is issued in furtherance of the Kenya Law Reform Commission's mandate under section 6 of the Kenya Law Reform Commission Act, No. 19 of 2013, to keep under review all the law and recommend its reform to ensure, among others, that the law systematically develops in compliance with the values and principles enshrined in the Constitution and that the law is consistent, harmonized, just, simple, accessible, modern and cost-effective in application.

The Kenya Law Reform Commission (KLRC) is in receipt of a letter from the National Assembly dated 20 December 2022 (ref: NA/DDC/JLAC/2022/010) seeking its comments on the Statute Law (Miscellaneous Amendments) Bill, 2022, National Assembly Bill, No. 60 of 2022. The Bill seeks to "amend various statutes in keeping with the practice of making minor amendments which do not merit the publication of several separate Bills". The National Assembly has sought KLRC's comments on the Bills under the purview of the Departmental Committee on Justice and Legal Affairs.

Against this background and pursuant to the KLRC's mandate, KLRC has undertaken an analysis of the relevant Bills as set out below.

### II. ANALYSIS

	LAW	S.	PROPOSED AMENDMENT	KLRC COMMENT	JUSTIFICATION
1.	The Judicature Act (Cap.8)	7(1)	Delete the word "thirty" and substitute therefor the word "seventy".	No objection to the proposed amendment.	Increasing the number of judges at the Court of Appeal will facilitate speedy delivery of justice.
2.	The Appellate Jurisdiction Act (Cap. 9)	59(7)	Delete the expression "Attorney-General" wherever it appears and substitute therefor the expression "Director of Public Prosecutions".	This section does not exist in the Act and is instead found in the Court of Appeal Rules. KLRC has no objection to the amendment of the Court of Appeal Rules in the requisite	The proposed amendment would align the Rules to Article 157(6) of the Constitution which provides that the Director of Public Prosecutions is the one to exercise State powers of prosecution.

				manner and not through the amendment of the Appellate Jurisdiction Act.	
	The Appellate Jurisdiction Act (Cap. 9)	73	Delete the expression "Attorney-General" wherever it appears and substitute therefor the expression "Director of Public Prosecutions".	This section does not exist in the Act and is instead found in the Court of Appeal Rules. KLRC has no objection to the amendment of the Rules in the requisite manner and not through the amendment of the Appellate Jurisdiction Act.	The proposed amendment would align the Rules to Article 157 of the Constitution.
3.	The Vexatious Proceedings Act (Cap. 41)	4	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157(6) of the Constitution.
4.	The Penal Code (Cap. 63)	146	Delete the words "idiots or imbeciles" wherever they appear and substitute therefor the words "persons with mental disabilities".	No objection to the proposed amendment.	The proposed amendment aligns the Code with the constitutional provisions on persons with disabilities, the Persons with Disabilities Act (No. 14 of 2003) and the conventions that Kenya has ratified on persons with disabilities.
5.	The Criminal Procedure Code (Cap.75)	2	Delete the expression "State Counsel" appearing in the definition of the term "public prosecutor" and substitute therefor the expression "Prosecution Counsel".	No objection to the proposed amendment.	The proposed amendment would align the Code to the Office of the Director of Public Prosecutions Act, 2013.

		<p>Delete the definition of "police officer" and substitute therefor the following new definition—</p> <p>"police officer" has the meaning assigned to it under the National Police Service Act, 2012.</p>	No objection to the proposed amendment.	The proposed amendment would align the Code to the National Police Service Act, 2012.
		<p>Delete the definition of "police station" and substitute therefor the following new definition—</p> <p>"police station" has the meaning assigned to it under the National Police Service Act, 2012.</p>	No objection to the proposed amendment.	The proposed amendment would align the Code to the National Police Service Act, 2012.
	83	<p>Delete and substitute therefore the following new section—</p> <p>83.(1) The Director of Public Prosecutions may order in writing that all or any of the powers vested in him by sections 81 and 82, and by Part VIII, be vested for the time being in the Secretary of Prosecution Services, the Deputy Director of Public Prosecutions, the Senior Assistant Director of Public Prosecutions, the Senior Principal Prosecution Counsel, Senior Prosecution Counsel and Prosecution Counsel, and the exercise of those powers by the specified officers shall then operate as if they had been exercised by the Director of Public Prosecutions.</p>	No objection to the proposed amendment.	The proposed amendment would align the Act to the Office of the Director of Public Prosecutions Act, 2013.



			(2) The Director of Public Prosecutions may in writing revoke an order made by him under this section.		
		90(3)	Delete the words "a Sunday" and substitute therefor the words "any day of the week including Sunday".	No objection to the proposed amendment.	The proposed amendment clarifies the provision.
		123(1)	Delete the words "other than a person accused of murder, treason, robbery with violence, attempted robbery with violence and any related offence".	No objection to the proposed amendment.	The proposed amendment aligns the Code to Article 49(1) (h) of the Constitution which provides that all offences are bailable.
		131(2)	Delete the word "movable".	No objection to the proposed amendment.	The proposed amendment widens the scope of property that may be attached. This may, in turn, act as a deterrent to a person bound by a recognizance.
		137	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
6.	The Extradition (Commonwealth) Countries Act (Cap. 77)	7	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
		8	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
		9	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.



		10	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
7.	Official Secrets Act (Cap. 187)	10(1). 49(1)	Deleting the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
8.	The Evidence Act (Cap. 80)	3	Insert the following definition in proper alphabetical sequence—  "photograph" means an image created by light falling on a light sensitive surface, either photographic film or an electronic medium and made visible and permanent by chemical treatment or stored digitally,	No objection to the proposed amendment.	The proposed amendment takes into account technological advances in photography.
		78(1)	Insert the words "or an electronic and digital medium" immediately after the word "film".	No objection to the proposed amendment.	The proposed amendment takes into account technological advances in photography.
		125 (2)	Insert the word "a mentally disordered person or a lunatic" and substitute therefor the words "a person with a mental disability".	No objection to the proposed amendment.	The proposed amendment aligns the Act with constitutional provisions on persons with disabilities, the Persons with Disabilities Act (No.14 of 2003) and the conventions that Kenya has ratified on persons with disabilities.
9.	The Vetting of Judges and Magistrates Act (No. 2 of 2011)		Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment save that the citation of the Act is wrong. It should read No. 2 of 2011 and not 2010).	The proposed amendment would align the Act to Article 157 of the Constitution.

10.	The Judicial Service Act (No. 1 of 2011)	38	<p>Insert the following new subsection immediately after subsection (1)—</p> <p>(1A) The Commission shall submit the annual report to the President and the National Assembly within six months after the end of the year to which it relates.</p>	<p>No objection to the spirit of the proposed amendment to provide a reasonable time frame for the submission of the annual report. However, the proposed amendment should read "Parliament" instead of "National Assembly" in accordance with Article 254(1) of the Constitution.</p>	<p>The proposed amendment contravenes Article 254(1) of the Constitution which requires constitutional commissions and independent offices to submit a report to the President and to Parliament. In addition, the proposed amendment contravenes section 38(4) of the Judicial Service Act which requires the report to be tabled before the two Houses of Parliament.</p>
				<p>Consider standardizing the provision for all constitutional commissions and independent offices.</p>	<p>This ensures consistency in legislation.</p>
11.	Independent Electoral and Boundaries Commission Act (No. 9 of 2011)	24(1)	<p>Delete the word "three" and substitute therefor the word "six".</p>	<p>No objection to the proposed amendment.</p>	<p>Three months is too short a period to file the annual report in view of the magnitude of work involved.</p>
12.	The Kenya National Commission on Human Rights Act, (No. 14 of 2011)	53	<p>Insert the following new subsection immediately after subsection (1)—</p> <p>(1A) The Commission shall submit the annual report in subsection (1) to the President and the National Assembly within six months after the end of the year to which it relates.</p>	<p>No objection to the spirit of the proposed amendment to provide a reasonable time frame for the submission of the annual report. However, the proposed amendment should read "Parliament" instead of "National Assembly" in accordance with Article 254(1) of the Constitution.</p>	<p>The proposed amendment contravenes Article 254(1) which requires constitutional commissions and independent offices to submit a report to the President and to Parliament.</p>

				Consider standardizing the provision for all constitutional commissions and independent offices.	This ensures uniformity in legislation.
13.	Ethics and Anti-Corruption Commission Act (No. 22 of 2011)	27(2)	Delete the word "three" and substitute therefor the word "six".	No objection to the proposed amendment.	Three months is too short a period to file the annual report in view of the magnitude of work involved.
14.	Anti-Corruption and Economic Crimes Act (No. 3 of 2003)	25A.	Deleting the expression "Attorney-General" and substituting therefore the expression "Director of Public Prosecutions".	No objection to the proposed amendments.	The proposed amendment would align the Act to Article 157 of the Constitution.
		37(6)			
		62(5)			
		62(6)	<p>(6A) Notwithstanding the provisions of any other law, where a state officer is under investigation for, or has been charged with corruption or economic crime, the Commission may, by an <i>ex parte</i> application in the High Court, seek for an order barring the officer from accessing his or her office or exercising the powers of that office including participating in decision making, voting and supervising staff.</p> <p>(6B) The provisions of subsection (6A) shall apply where the Commission upon preliminary investigations has established grounds to reasonably suspect that the public or state officer is likely to—</p> <p>(a) conceal, alter, destroy, or remove</p>	No objection to the proposed amendment. However, consider including the expression "public officer" in subsection (6A) as has been proposed in subsection (6B).	This offence should apply to both State and public officers. In addition, the proposed amendment is in line with the Court of Appeal decision in the case of <i>Moses Kasaine Lenolkulal vs Republic</i> , Criminal Appeal No. 109 of 2019.



			<p>records, documents or other evidence;</p> <p>(b) intimidate, threaten or otherwise interfere with witnesses; or</p> <p>(c) interfere with investigations in any other manner.</p>		
15.	Sexual Offences Act (No. 3 of 2006)	40	Deleting the expression "Attorney-General" and substituting therefore the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
16.	International Crimes Act (No. 16 of 2008)		Deleting the expression "Attorney-General" and substituting therefore the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
17.	Leadership and Integrity Act, 2012 (No. 19 of 2012)	12A.	New subsections to mandate the EACC vet all the shortlisted candidates.	Considering the number of requests that the EACC may receive from the various public entities, it would be prudent for the Commission to be mandated to vet only those who are considered for appointment, that is, those who have undergone the interview process.	This would save the EACC time and money.
18.	The Kenya Law Reform Commission Act (No. 19 of 2013)			Although the National Assembly's letter dated 20 December 2022 (ref: NA/DDC/JLAC/2022/010) and the Memorandum to the Public indicates that the Statute Law (Miscellaneous Amendment) Bill, 2022, seeks to amend the Kenya Law Reform Commission	

				<p>Act to provide for clarifications on the attendance of the <i>ex officio</i> members at the Commission meeting, the Bill does not contain any proposed amendments.</p> <p>Further, the Kenya Law Reform Commission Act is erroneously cited as Act, No. 35 of 2013 instead of No. 19 of 2013.</p>	
19.	Bribery Act (No. 47 of 2016)	1.	Delete the expression "Bribery Act" and substitute "Anti-Bribery Act".	No objection to the proposed amendment.	The proposed amendment describes what the Act is about and avoids any misrepresentation.
		5.	Delete the word "who" and substitute therefore the word "if the person offering, promising or giving knows".	The word "who" appears in both subsection (1) and (2), hence there is need for clarity on where the phrase "if the person offering, promising or giving knows" is to be inserted.	This will clarify the provision.





REPUBLIC OF KENYA  
THE NATIONAL ASSEMBLY  
THIRTEENTH PARLIAMENT (FIRST SESSION)  
DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY AND MINING

In the Matter of Articles 2 (5) and (6) and 118 (1)(b) of the Constitution and Section 8 of the Treaty Making and Ratification Act, 2012

and  
In the Matter of Consideration by the National Assembly of:

- 1) The Kigali Amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer.
- 2) The Bamako Convention on the Ban on the Import into Africa and the Control of the Transboundary Movement and Management of Hazardous Wastes Within Africa.
- 3) The Amended Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Western Indian Ocean from Land Based Sources and Activities.

**PUBLIC PARTICIPATION (SUBMISSION OF MEMORANDA)**

Pursuant to Articles 2 (5) and (6) and 118 (1)(b) of the Constitution and Section 8 of the Treaty Making and Ratification Act, 2012, the following Agreements were submitted to the Speaker of the National Assembly on 29<sup>th</sup> November, 2022 and consequently committed to the Departmental Committee on Environment, Forestry and Mining for consideration and reporting to the House:

1. Kigali Amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer.
2. The Accession of the Bamako Convention on the Ban on the Import into Africa and the Control of the Transboundary Movement and Management of Hazardous Wastes Within Africa.
3. The Amended Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Western Indian Ocean from Land Based Sources and Activities.

The Kigali Amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer sets out to significantly limit future production and consumption of hydrofluorocarbons (HFCs). It also contains the manner in which countries are to carry out the process of phasing down on the production and usage of HFCs. The amendment further includes target baselines and emission levels that states in agreement with it are to achieve.

The Bamako Convention on the Ban on the Import into Africa and the Control of the Transboundary Movement and Management of Hazardous Wastes Within Africa aims to prohibit the import into Africa of any hazardous waste and to specifically ban the transboundary movement of hazardous wastes.

The Amended Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Western Indian Ocean from Land Based Sources and Activities aims to enhance the management of the marine and coastal environment and natural heritage including its biological diversity for the sustainable use and benefits of present and future generations.

The Departmental Committee on Environment, Forestry and Mining hereby invites the public and stakeholders to submit Memoranda on the three Agreements. The full text of the Agreements and the accompanying Memorandum to Parliament may be accessed at <http://www.parliament.go.ke/the-national-assembly/house-business/paper-laid>

The memoranda may be submitted to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk of the National Assembly, Main Parliament Buildings, Nairobi; or emailed to [cnas@parliament.go.ke](mailto:cnas@parliament.go.ke); to be received on or before Friday, 6<sup>th</sup> January, 2023.

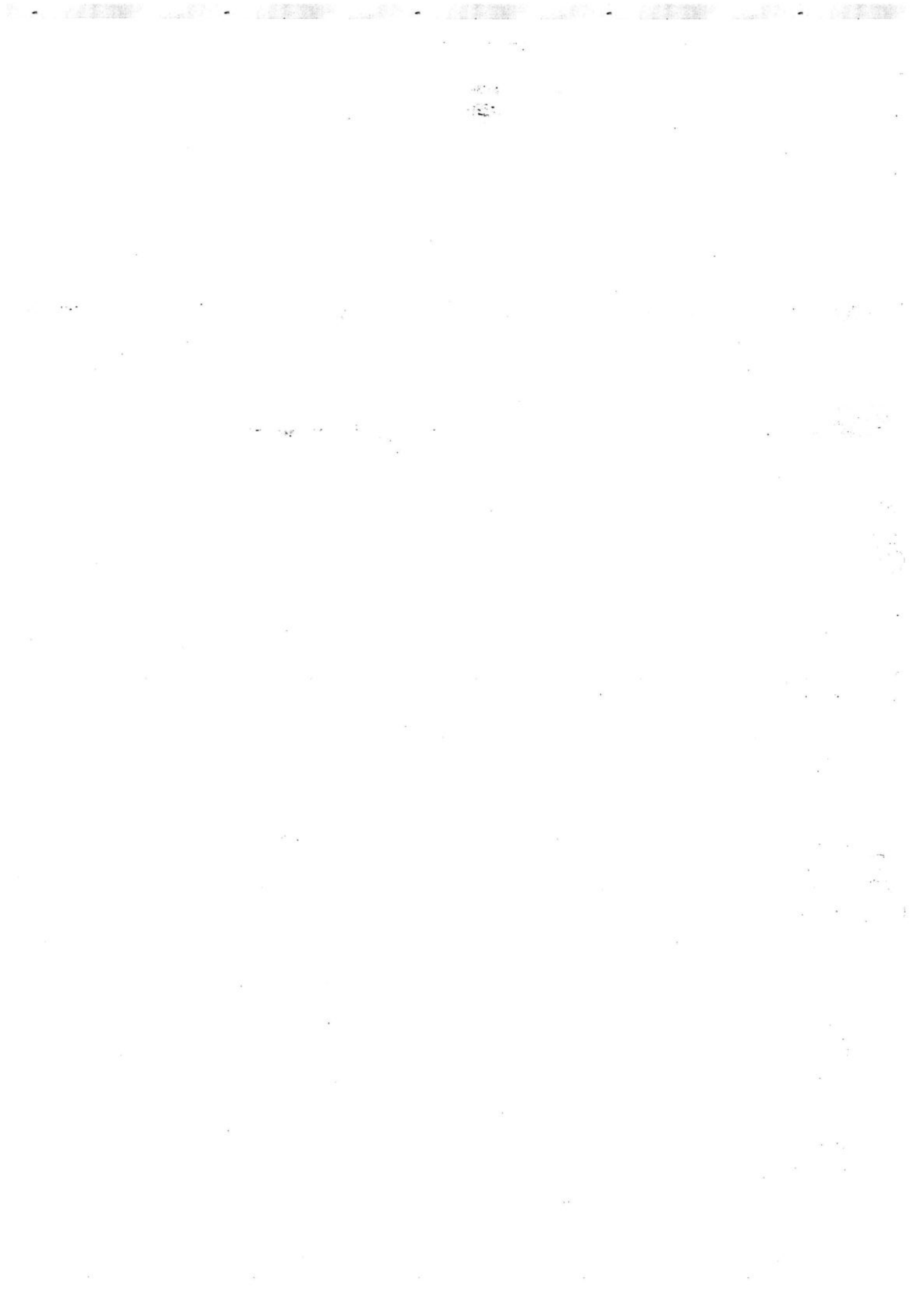
SAMUEL NJOROGE  
CLERK OF THE NATIONAL ASSEMBLY

16<sup>th</sup> December, 2022

*In the Welfare of Society and the Just Government for the People*







① D/DC  
Please deal.  
Q.L.  
13/01/23

REPUBLIC OF KENYA



② Mr. Mutunga  
Please deal  
(Signature)  
16/1/23

MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN  
DEVELOPMENT

STATE DEPARTMENT FOR LANDS AND PHYSICAL PLANNING

Telephone: Nairobi 2718050  
When replying please quote

ARDHI HOUSE  
1<sup>st</sup> NGONG AVENUE  
OFF NGONG ROAD  
P.O. BOX 30450

NAIROBI

Ref: No. MOLPP/ADM/06/12/(64)

12<sup>th</sup> January, 2023

Samuel N. Njoroge  
Clerk of the National Assembly  
Parliament Buildings  
NAIROBI



Clerk,

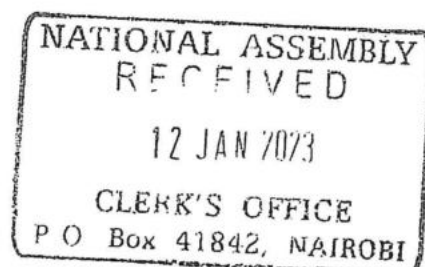
VIEWS ON THE STATUE LAW (MISCELLANEOUS AMENDMENT)  
(NATIONAL ASSEMBLY BILL NO. 60 OF 2022)

Please find enclosed a matrix containing our comments on the above bill for your consideration as per your letter of 21<sup>st</sup> December, 2022.

Sincerely,

(Signature)

HON. GENERALI NIXON K. KORIR  
PRINCIPAL SECRETARY





The Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022) sponsored by the Leader of Majority Party, Hon. Kimani Ichung'wah, CBS, MP is an Omnibus Bill which seeks to amend various statutes in keeping with the practice of making minor amendments which do not merit the publication of several separate Bills.

The Statute Law (Miscellaneous Amendments) Bill, 2022 contains proposed amendments to the following statutes under the purview of the Committee:-

**1. The National Land Commission Act, 2012 (No. 5 of 2012)**

The Bill seeks to amend the above Act to require the presentation of Annual Reports by the Commissions/Offices within six (6) months after the end of the year to which they relate.

- 2. The Land Consolidation Act (Cap 283); and,**
- 3. The Land Adjudication Act (Cap 284).**

The Bill seeks to amend the above Acts in order to harmonise their provisions with the functions of the Director of Public Prosecutions under Article 157 of the Constitution.

The Statute Law (Miscellaneous Amendments) Bill was published on 22<sup>nd</sup> November 2022 and Read a First Time in the House on 8<sup>th</sup> December, 2022. Pursuant to Standing Order 127(1), the Bill was committed to the Departmental Committee on Lands for consideration and tabling of its report in the House.

This is therefore to request for your written submissions in relation to the above Acts to be sent to the Office of the Clerk, Main Parliament Building or emailed to [cnay@parliament.go.ke](mailto:cnay@parliament.go.ke) to be received on or before **Friday, 13<sup>th</sup> January 2023**.

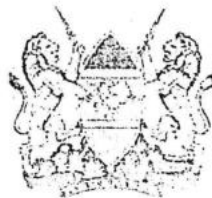
A copy of the Bill is available at the National Assembly Table Office, Main Parliament Building or on [www.parliament.go.ke/the-national-assembly/house-business/bills](http://www.parliament.go.ke/the-national-assembly/house-business/bills).

The Liaison Officer responsible for this matter is Ms. Naserian Lotuai Tel. 0704452312 or [email.naserian.lotuai@parliament.go.ke](mailto:email.naserian.lotuai@parliament.go.ke).

Yours

**JEREMIAH W. NDOMBI, MBS**  
**For: CLERK OF THE NATIONAL ASSEMBLY**

Copy to: - Mr. Zachariah Mwangi Njeru  
Cabinet Secretary  
Ministry of Lands, Housing and Urban Development  
Ardhi House  
**NAIROBI**



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E-mail: [na@parliament.go.ke](mailto:na@parliament.go.ke)

[www.parliament.go.ke](http://www.parliament.go.ke)

REPUBLIC OF KENYA  
THE NATIONAL ASSEMBLY

Clerk's Chambers

National Assembly

Parliament Buildings

P.O. Box 4417-00100

NAIROBI, Kenya

REF: NA/DDC/LANDS/2022/ (004)

21<sup>st</sup> December, 2022

Hon. Justin Muturi, EGH

Attorney General

Office of the Attorney General and Department of Justice

Sheria House

Harambee Avenue

NAIROBI

Hon. Nixon Korir

Principal Secretary

State Department for Lands

Ministry of Lands, Housing and Urban Development

Ardhi House

NAIROBI

Ms. Kabale Tache

Ag. Chief Executive Officer

National Land Commission

316 Upperhill Chambers, 20<sup>th</sup> Floor

2<sup>nd</sup> Ngong Avenue

P.O Box 4417-00100

NAIROBI

Mr. Joash Dache, MBS

Commission Secretary

Kenya Law Reform Commission

3<sup>rd</sup> Floor, Reinsurance Plaza

Taifa Road

NAIROBI

Dear

**RE: INVITATION TO SUBMIT VIEWS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILL No. 60 OF 2022)**

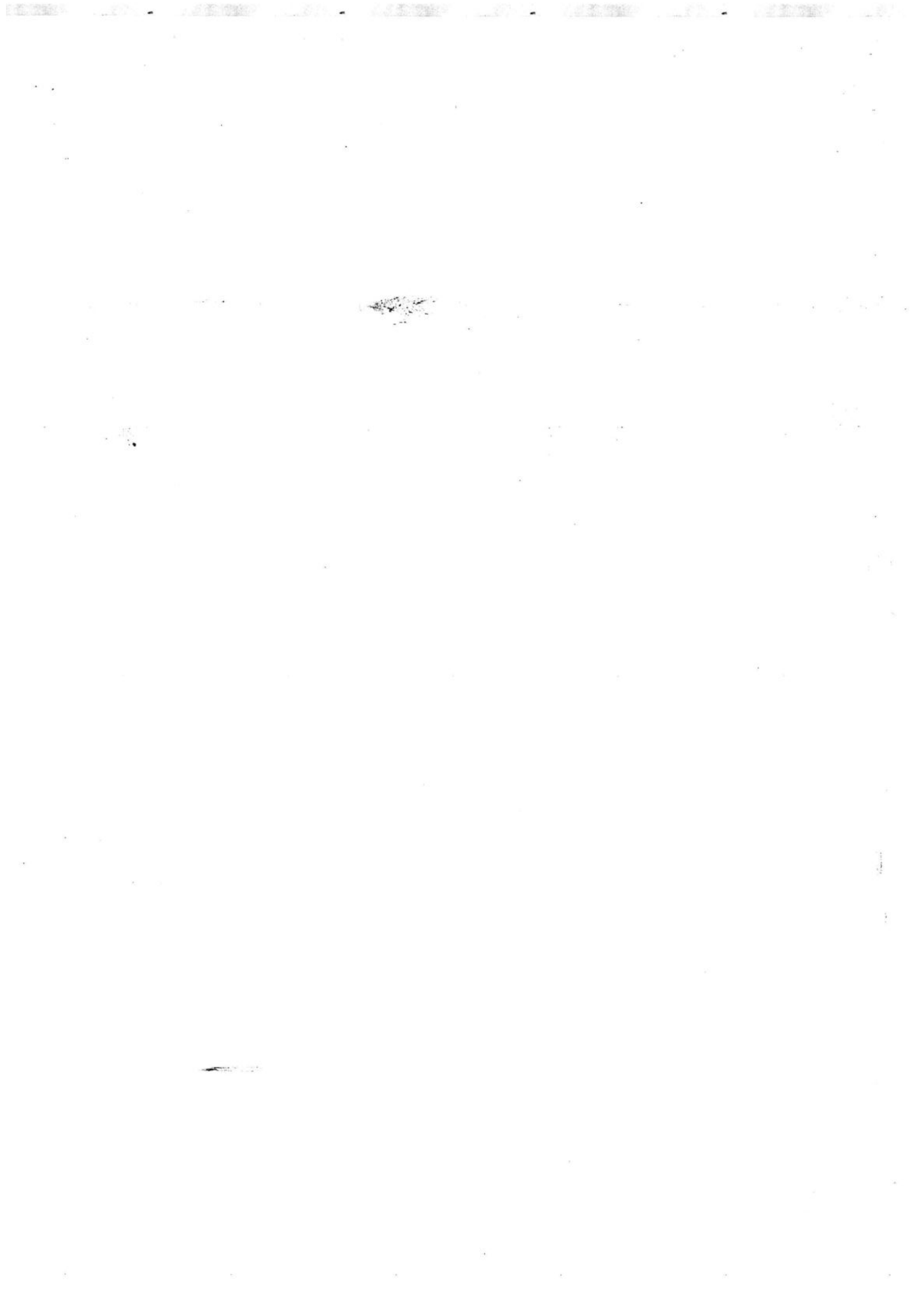
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The Departmental Committee on Lands is established under National Assembly Standing Order 216 and is mandated to amongst others, *'study and review all legislation referred to it'*.

Article 118(1)(b) of the Constitution of Kenya and National Assembly Standing Order 127(3) require Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.

STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL  
(NATIONAL ASSEMBLY BILL No. 60 OF 2022)

Section	Provision of the Act	Proposal for amendment	Comment
a) The Land Consolidation Act (Cap. 283)			
14 (6) (b)	<p>14. Procedure in Committees and Arbitration Boards</p> <p>(1) If a member of a Committee or of an Arbitration Board has any interest, direct or indirect, in the determination by the Committee or the Arbitration Board at which the determination of that claim is under consideration, he shall, at the meeting, as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on any question with respect to, the determination of that claim</p> <p>(6) (a) If a person fails to comply with the provisions of subsection (1) of this section, he shall be guilty of an offence and liable to imprisonment for a term not exceeding six months</p> <p>(b) A prosecution for an offence under this section shall not be instituted except with the consent of the <u>Attorney General</u>.</p>	<p>Amends by deleting the expression "<u>Attorney General</u>" and substituting therefore the expression "<u>Director of Public Prosecutions</u>"</p>	<p>The Ministry concurs with proposed amendment since the amendment seeks to align the section with the constitutional mandate of the Office of the Director of Public Prosecutions which is now independent of the Office of the Attorney General with specific mandate to exercise State powers of prosecution.</p> <p>All criminal offences are now prosecuted by the Director of Public Prosecutions under Article 157 of the Constitution.</p>
b) The Land Adjudication Act (Cap. 284)			
33	<p>Offences</p> <p>Any person who-</p> <p>(a) after receiving a summons issued under this Act, without reasonable excuse neglects or refuses to attend in pursuance of it or to produce any map, plan, instrument or other document which he is required by it to produce; or</p>	<p>Amends by deleting the expression "<u>Attorney General</u>" and substituting therefore the expression "<u>Director of Public Prosecutions</u>"</p>	<p>The Ministry also concurs with proposed amendment since the amendment seeks to align the section with the constitutional mandate of the Office of the Director of Public Prosecutions which is now independent of the</p>





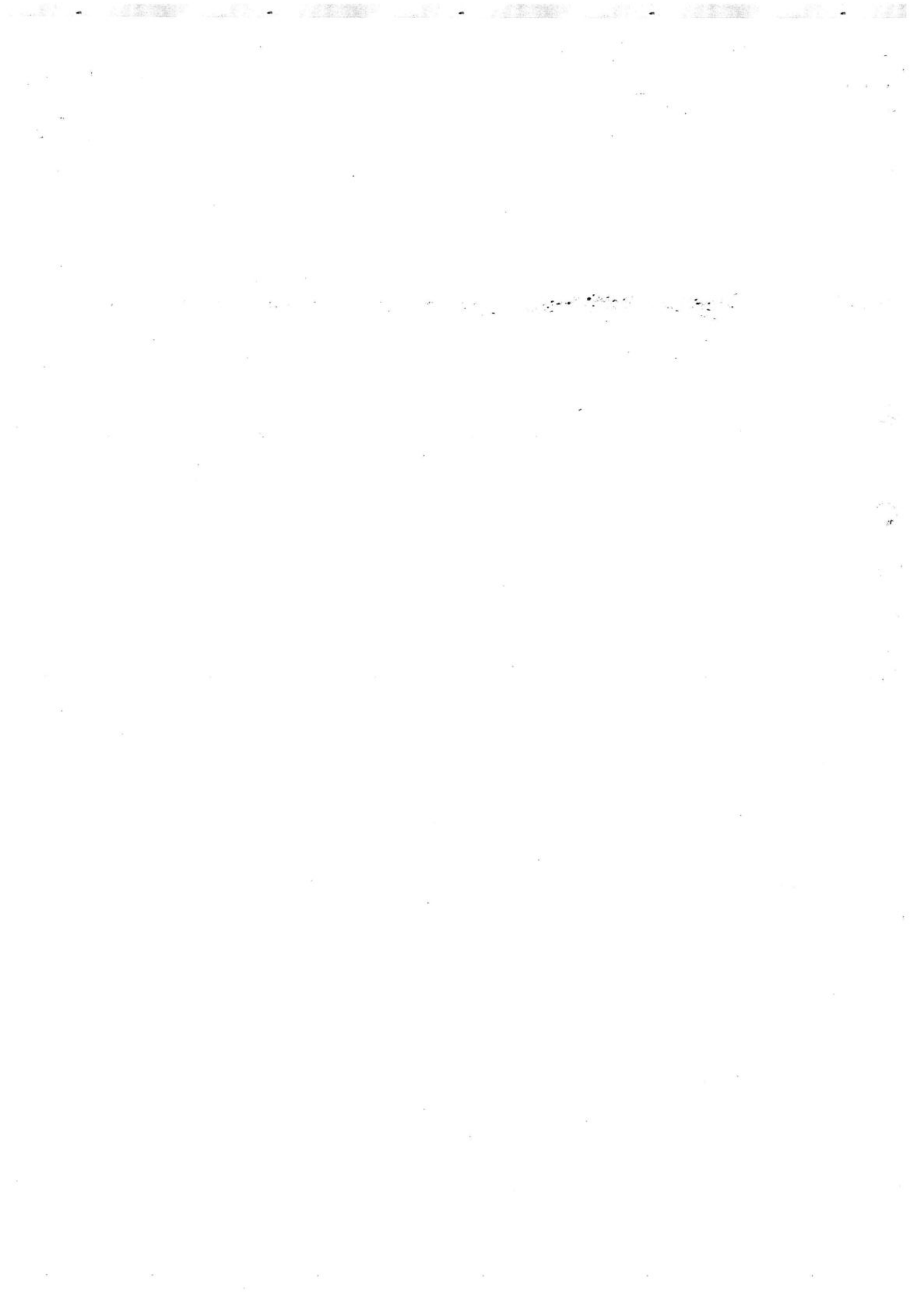
	<p>(b) without reasonable excuse neglects or refuses to answer upon path or otherwise, or knowingly gives untrue answer to, a question lawfully put to him by an officer, committee or board under this Act; or</p> <p>(c) without reasonable excuse neglects or refuses to demarcate his land, or to assist in the demarcation of his land, or to clear or assist in the clearing of any boundary or other line when required to do so by a demarcation officer; or</p> <p>(d) without reasonable excuse interferes with any demarcated boundary, or defaces, removes, injures or otherwise impairs any feature of a demarcated boundary or allows any demarcated boundary to fall into despair; or</p> <p>(e) contravenes section 8 (1) of this Act, shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment to a term not exceeding six months or to both such fine and such imprisonment</p> <p>Provided that a prosecution for an offence under paragraph (e) shall not be instituted except with the consent of the <u>Attorney General</u>.</p>		<p>Office of the Attorney General with specific mandate to exercise State powers of prosecution.</p> <p>All criminal offences are now prosecuted by the Director of Public Prosecutions under Article 157 of the Constitution.</p>
The Architects and Quantity Surveyors Act (Cap. 525)			
3(3)	<p>3. (1) Subject to the provisions of this Act, no person shall practice under any name, title or style containing any of the words or phrases "architect", "architecture", "architectural", "quantity surveyor" or "quantity surveying" unless he is registered under this Act as an architect or a quantity surveyor, as the case may be.....</p> <p>(2) Any person who contravenes the provisions of subsection (1) of this section shall be guilty of an offence a liable to a fine not exceeding five thousand shillings</p>	<p>Amends by deleting the expression "<u>Attorney General</u>" and substituting therefore the expression "<u>Director of Public Prosecutions</u>"</p>	<p>The Ministry concurs with proposed amendment since the amendment seeks to align the section with the constitutional mandate of the Office of the Director of Public Prosecutions which is now independent of the Office of the Attorney General with specific mandate to exercise State powers of prosecution.</p>



			<p>In view of the foregoing and for uniformity the period for submission of the report to the President and to Parliament may be amended to 3 months after the end of each financial year.</p>
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	(3) Without prejudice to the powers of the <u>Attorney General</u> , proceedings for an offence under this section be instituted by any person who is authorized in that behalf, whether generally or specially, by the board in writing.		All criminal offences are now prosecuted by the Director of Public Prosecutions under Article 157 of the Constitution.
The National Land Commission Act (No. 5 of 2012)			
33	<p><b>Annual Report</b></p> <p>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-</p> <p>(a) the financial statements of the Commission;</p> <p>(b) a description of the activities of the Commission;</p> <p>(c) information relating to the progress made in the registration of title in land;</p> <p>(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;</p> <p>(e) any impediments to the work of the Commission; and</p> <p>(f) Such other information as the Commission considers appropriate in relation to the functions of the Commission.</p>	<p>Insert the following new subsection immediately after subsection (1) -</p> <p>(1A) The Commission shall submit the annual report in subsection (1) to the President and the National Assembly within six months after the end of the year to which it relates.</p>	<p>Article 254 (1) of the Constitution, 2010 requires commissions and independent offices to submit a report to the President and to Parliament as soon as practicable after the end of each financial year</p> <p>Several legislations to establish the various commissions and independent offices set out in the Constitution have sought to fix timelines for submission of the reports as follows:</p> <p>i) Independent Electoral and Boundaries Commission Act (No. 9 of 2011)- 3 months after the end of each financial year (Section 24)</p> <p>ii) Parliamentary Service Act (No. 22 of 2019)- 3 months after the end of each financial year (Section 44)</p> <p>iii) Public Service Commission Act, 2017- 3 months after the closure of the financial year (Section 90)</p>





*D/Deptl Commis*  
*for attention of*  
*Land Commission*  
*8/2/23*



**NATIONAL LAND COMMISSION**

Tel.0202718050  
Email.info@nlc.or.ke  
Website: www.nlc.or.ke

316 UPPER HILL CHAMBERS  
2<sup>ND</sup> NGONG AVENUE  
P.O. Box 44417  
**NAIROBI**

OUR REF: NLC/LEGAL/ /VOL 1/12

26<sup>th</sup> January 2023

The Clerk of The National Assembly  
National Assembly  
Parliament Buildings  
P.O Box 41842-00100  
**NAIROBI**

*Daniel Mutunga*  
*pls facilitate*  
*W L W*  
*9/2/23*

Dear Sir,

**RE: THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILL NO. 60 OF 2022)**

The above subject and your letter dated 21<sup>st</sup> December, 2022 refers.

The National Land Commission, having perused the proposed amendment, wishes to submit as follows;

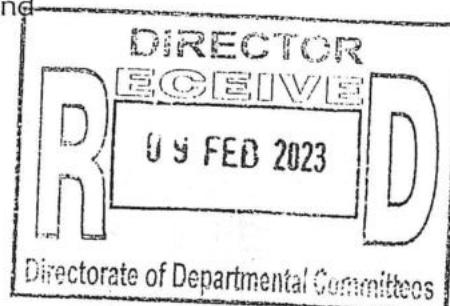
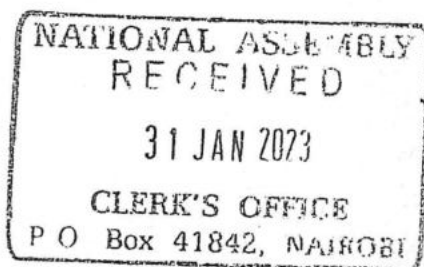
**The National Land Commission Act No. 12 of 2012**

The bill seeks to amend **Section 33** of the **National Land Commission Act** to provide a time frame within which the Commission ought to present its annual report.

**Section 33 (1)** of the **NLC Act** Provides for the annual report and states as follows:

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 stage 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.

The bill proposes to insert the following new subsection immediately after subsection (1).

**(1A) The commission shall submit the annual report in subsection (1) to the President and the National Assembly within 6 months after the end of the year to which it relates.**

### **Conclusion**

It's the Commission's submission that the amendment is proper and within the law since it only seeks to provide a time line for the presentation of the annual report.

### **The land Consolidation Act Cap 283 and The Land Adjudication Act Cap 284**

The bill seeks to amend **Section 14 (6)(b)** of the **Land Consolidation Act** and **Section 33** of the **Land Adjudication Act** in order to harmonize its provisions with the functions of the Office of the Director of Public Prosecutions as envisaged under **Article 157 of the Constitution of Kenya** which establishes the office of the director of Public Prosecutions.

**Section 14 (1) of the Land Consolidation Act** states that:

"If a member of a Committee or of an Arbitration Board has any interest, direct or indirect, in the determination by the Committee or the Arbitration Board (as the case may be) of any claim to any right or interest in any land, and is present at a meeting of the Committee or the Arbitration Board at which the determination of that claim is under consideration, he shall, at the meeting, as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on any question with respect to, the determination of that claim".

**Section 14(6) of the Land Consolidation Act** states that:

- a) If any person fails to comply with the provisions of subsection (1) of this section, he shall be guilty of an offence and liable to imprisonment for a term not exceeding six months.
- b) A prosecution for an offence under this section shall not be instituted except with the consent of the Attorney-General.

**Section 33 of the Land Adjudication Act** states that-

Any person who:

- a) after receiving a summons issued under this Act, without reasonable excuse neglects or refuses to attend in pursuance of it or to produce any map, plan, instrument or other document which he is required by it to produce; or
- b) without reasonable excuse neglects or refuses to answer upon oath or otherwise, or knowingly gives an untrue answer to, a question lawfully put to him by an officer, committee or board under this Act; or

- c) without reasonable excuse neglects or refuses to demarcate his land, or to assist in the demarcation of his land, or to clear or assist in the clearing of any boundary or other line, when required to do so by a demarcation officer; or
- d) without reasonable excuse, interferes with any demarcated boundary, or defaces, removes, injures or otherwise impairs any feature of a demarcated boundary, or allows any demarcated boundary to fall into disrepair; or
- e) contravenes section 8(1) of this Act,

shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and such imprisonment:

Provided that a prosecution for an offence under paragraph (e) of this section shall not be instituted except with the consent of the Attorney-General.

The bill seeks to substitute the expression "**Attorney-General**" with the expression "**Director of Public Prosecutions**" in both Acts.

The Prosecutorial powers were constitutionally transferred from the office of the Attorney General to the Office of the Director of Public Prosecutions under Article 157 of the Constitution and the Office of the Director of Public Prosecutions Act.

Therefore, it is the Office of the Director of Public Prosecutions that has the powers to institute, take over or continue and discontinue any proceedings of a criminal nature as per **Article 157 (6)** of the Constitution of Kenya and **Section 5** of the Office of the Director of Public Prosecutions Act.

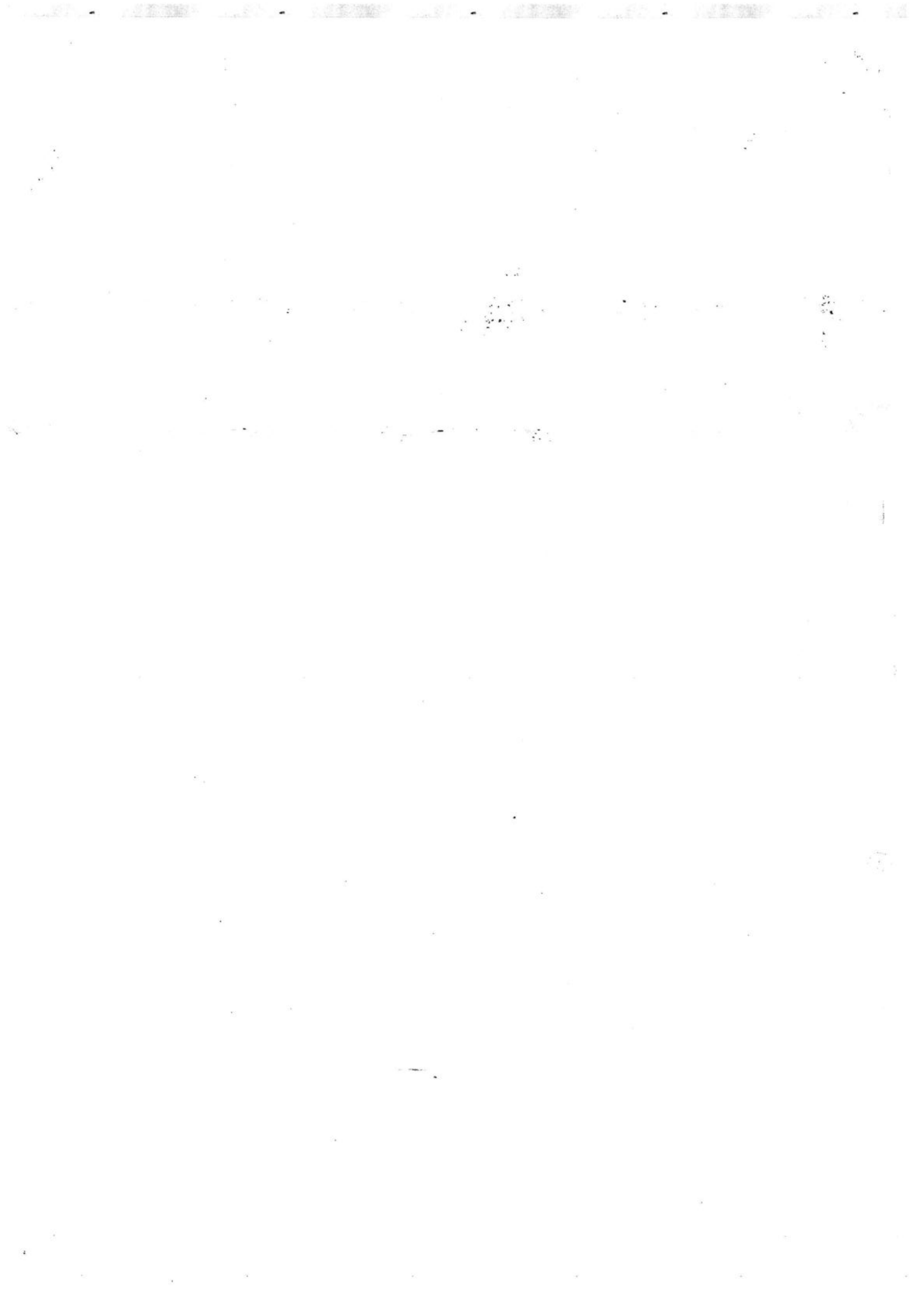
Under the subsidiary legislation **No. 104 of 2011** any prosecutorial powers which were exercisable by the Attorney General were transferred to the Office of the Director of Public Prosecutions.

#### Conclusion

The bill therefore, is in order and within the Law and Constitutional Limits by proposing the substitution of the expression "**the Attorney General**" with "**Office of the Director of Public Prosecutions**" in both Acts since prosecutorial powers are no longer vested in the Attorney General.

Yours Sincerely,

  
Kabale Tache  
Secretary/CEO



D/D C

Please deal.  
Sme.

18/01/23



PUBLIC SERVICE COMMISSION



Lands

PSC/LEG/GEN/006/056/VOL.XIX/74

16th January 2023

Mr. Samuel Njoroge  
Clerk of the National Assembly  
Parliament Buildings  
**NAIROBI**

Lilian  
Kindly distribute copies  
to relevant committees  
18/1/23

**RE: INVITATION TO SUBMIT VIEW ON THE STATUTE LAW  
(MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILLS  
NO. 60 OF 2022)**

This has reference to your letter dated 21<sup>st</sup> December 2022.

The Commission supports the proposed amendment which is aimed at extending the period for submitting annual reports from three to six months.

dm

**DR. SIMON K. ROTICH, CBS  
SECRETARY/CEO  
PUBLIC SERVICE COMMISSION**

