

SPECIAL ISSUE

Kenya Gazette Supplement No. 194 (National Assembly Bills No. 65)



REPUBLIC OF KENYA

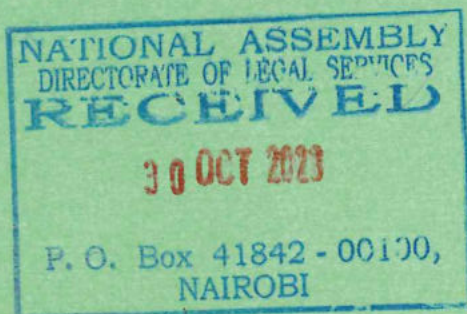
KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2023

NAIROBI, 19th October, 2023

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THE LAND LAWS (AMENDMENT) BILL, 2023

A Bill for

AN ACT of Parliament to make amendments to laws that relate to land

ENACTED by the Parliament of Kenya, as follows —

1. This Act may be cited as the Land Laws (Amendment) Act, 2023.

Short title.

2. The several laws specified in the first column of the Schedule are amended in the provisions specified in the second column thereof, in the manner respectively specified in the third column.

Amendment of written laws.

SCHEDULE

<i>Written law</i>	<i>Provision</i>	<i>Amendment</i>
National Land Commission Act, No. 5 of 2012	s.14	Delete section 14 and substitute therefor the following new section—
	Review of grants and dispositions.	<p>14. (1) Subject to Article 68(c)(v) of the Constitution, the Commission shall, on its own motion or upon a complaint by the National government, a county government, a community or an individual, review all grants or dispositions of public land to establish their propriety or legality</p> <p>(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).</p> <p>(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 grantor disposition concerned, a</p>

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notice of such review and an opportunity to appear before it and to inspect any relevant documents.

(4) The Commission shall upon hearing the parties in accordance with subsection (3), make a determination.

(5) Where upon hearing the parties, 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) Where the Commission makes a determination under subsection (6)—

- (a) the Commission shall ensure that the determination complies with Article 40(6) of the Constitution; and
- (b) any interested party may register the determination in the Environment and Lands.

(10) Where a person registers a determination under subsection (9),—

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- (a) the High Court shall enter judgment in accordance with the determination; and
- (b) the registered determination shall include any consequential orders issued as a result of the determination.

(11) A person may enforce a judgment that is entered under subsection (9) in the manner provided in the Civil Procedure Act.

(12) The Commission shall publish all determinations made under subsection (6).

(13) A person who is aggrieved by a determination under this section may apply for review of the determination, under section 7 of the

No.4 of 2015. Fair Administrative Action Act.

s.15 Delete section 15 and substitute therefor the following new section—

Historical land injustices

15. (1) Pursuant to Article 67 (3) of the Constitution, the Commission shall initiate, receive, admit, and investigate a complaint on present or historical land injustices, and recommend appropriate redress.

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

- (a) was occasioned by a violation of right in land on the basis of any law, policy, declaration, administrative practice, treaty or agreement;
- (b) resulted in displacement from their habitual place of residence;

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- (c) occurred between 15th June 1895 when Kenya became a protectorate under the British East African Protectorate and 27th August, 2010 when the Constitution of Kenya was promulgated;
- (d) has not been sufficiently resolved and subsists up to the period specified under paragraph (c); and
- (e) meets the criteria set out under subsection (3) of this section.

(3) For the purposes of this section, a “historical land injustice” includes a subsisting land injustice.

(4) A historical land claim may only be admitted, registered and processed by the Commission if—

- (a) it is verifiable that the act complained of resulted in displacement of the claimant or other form of historical land injustice;
- (b) the claim has not or is not capable of being addressed through the ordinary court system on the basis that—
 - (i) the claim contradicts a law that was in force at the time when the injustice began; or
 - (ii) the claim is debarred under section 1 of the Limitation of Actions Act, (Cap. 22); or any other law;

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(c) the claimant was either a proprietor or occupant of the land upon which the claim is based; and

(d) no action or omission on the part of the claimant amounts to surrender or renouncement of the right to the land in question.

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

(a) colonial occupation;

(b) independence struggle;

(c) pre-independence treaty or agreement between a community and the government;

(d) development-induced displacement for which no adequate compensation or other form of remedy was provided, including conversion of non-public land into public land;

(e) inequitable land adjudication process or resettlement scheme;

(f) politically motivated or conflict based eviction;

(g) corruption or other form of illegality;

(h) natural disaster; or

(i) other cause approved by the Commission.

(6) When conducting investigations under subsection (1) into historical

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land injustices the Commission may—

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

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

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

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within a period specified in such notice.

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

(10) The Commission, after investigating any case of historical land injustice referred to it, shall recommend any remedies which may include —

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

(11) Upon determination of a historical land injustice claim by the

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Commission, any authority mandated to act under the redress recommended shall be required to do so within three years.

(12) The Commission shall publish all determinations.

No.4 of 2015.

(13) A person who is aggrieved by a determination under this section may apply for review of the determination under section 7 of the Fair Administrative Acton Act.

Land Act,
No.6 of
2012.

s.2

By inserting the following new definitions in the proper alphabetical order—

“public body” means—

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

“acquiring public body” means a public body that has expressed interest in acquiring land compulsorily.

s.28

insert the following new sections immediately after section 28—

*Rent for the
several periods.*

“28A. The annual rent payable under a lease under this Part shall be the rent reserved in the lease and for each subsequent period of ten years which shall be charged at such percentage of the unimproved value of the land assessed every ten years by

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the Commission and as gazetted by the Cabinet secretary.”

Valuation of land for rent.

28B. (1) Notwithstanding anything contained in any lease, the Commission shall every tenth year, until the expiration of the term, cause the land which is the subject of a lease under this Part to be valued for the purpose of determining the rent which shall be payable for the second or subsequent period of such lease, whichever next follows the year in and in respect of which the valuation is made and the rent so determined shall be payable as from the beginning of the period for which it is determined to be payable.

(2) Where the lessee successfully objects to the valuation under section 28C, the rent payable shall, on the determination of the objection, be varied so as to be in accordance with the valuation determined under that section, and the lessee shall be entitled to a refund of the rent which may have been overpaid.

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

28C. (1) Where each valuation provided for in section 28B has been made, the Cabinet secretary shall, before the expiration of the year in which the valuation was made, cause a notice to be served upon the lessee setting forth the value of the land determined and the annual rent which in accordance with such valuation shall be payable by the lessee during the next following period and calling upon the lessee to state in writing whether the lessee objects to the valuation

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(2) A person may not submit a defence that any notice required by this section to be served on a lessee has not been served in an action for any rent payable under a lease granted under this section.

s.107 Delete and substitute therefor the following new section—

Preliminaries
to acquisition

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

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

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

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

(5) If the Cabinet Secretary establishes that the request under

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

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

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

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

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

(8) Upon receipt of the notice under subsection (5), the Registrar

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No. 6 of 2012

shall make an order, pursuant to section 76 (1) of the Land Registration Act, 2012, prohibiting or restricting dealings with the affected portion of land thereof until it vests in the acquiring public body.

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

(10) For the purposes of sections 107 to 133, interested persons shall include any person whose interests appear in the land 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 occupants.

(11) 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

s.107A(7)

(a)

delete the word "Commission" and substitute therefor the words "Cabinet Secretary"

(b)

delete the word "Commission" and substitute therefor the words "Cabinet Secretary"

(c)

delete the word "Commission" and substitute therefor the words "Cabinet Secretary"

(d)

delete the word "Commission" and substitute therefor the words "Cabinet Secretary"

s.107A (8)

delete the word "Commission" and substitute therefor the words "Cabinet Secretary"

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(9)	delete the word “Commission” and substitute therefor the words “Cabinet Secretary”
s.108(1)	delete the word “Commission” and substitute therefor the words “Cabinet Secretary”
s.110 (1)	delete the word “Commission” and substitute therefor the words “Cabinet Secretary”
(2)	delete the word “Commission” and substitute therefor the words “Cabinet Secretary”
(3)	delete the word “Commission” and substitute therefor the words “Cabinet Secretary”
s.111(1A)	insert the following new subsection immediately after subsection 1A— “(1AA) The acquiring authority shall notify the Cabinet Secretary of the details relating to a deposit made under subsection (1A).”
(2)	insert the words “Cabinet Secretary in consultation with the” immediately after the expression “(2) The”.
s.112(1)	delete and substitute therefor the following new subsections— (1) There is established a committee to be known as the Land Compensation Inquiry Committee which shall consist of— (a) a chairperson, who shall be appointed by the Cabinet Secretary; (b) a deputy chairperson, who shall be appointed by the chairperson of the National Land Commission;

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- (c) one person appointed in writing as a member of the committee by the National Land Commission;
- (d) one person appointed in writing by the Attorney General; as a member of the committee
- (e) one person designated in writing as a member of the committee by an acquiring entity; and
- (f) the secretary to the National Land Commission.

(1A) (1) A person shall be qualified for appointment as the chairperson or a member of the committee 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) land law, land survey, spatial planning or land economics;
 - (ii) public administration;
 - (iii) land management and administration;
 - (iv) management of natural resources;
 - (v) land adjudication and settlement; or
 - (vi) social sciences.

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(c) is an employee of the appointing authority.

(1C) The secretary to the National Land Commission shall—

(a) be the secretary to the Committee;

(b) be the head of the secretariat of the Committee; and

(c) not have the right to vote.

(1D) At least thirty days after publishing the notice of intention to acquire land, the Committee 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 be interested or who claims to be interested in the land.

(2) delete the word “Commission” and substitute therefor the words “committee”

(3) delete the word “Commission” and substitute therefor the words “committee”

(4) delete the word “Commission” and substitute therefor the words “committee”

(5) delete the word “Commission” and substitute therefor the words

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- “committee” appearing immediately after the words “an inquiry, the”
- s.113(1) delete the word “Commission” and substitute therefor the words “Cabinet Secretary”
- (2) delete the word “Commission” and substitute therefor the words “Cabinet Secretary”
- (4) Delete and substitute therefor the following new subsection—
- “(4) Every award shall be filed in the office of the Cabinet secretary and a copy sent to the acquiring public body.”
- s.120 Delete and substitute therefor the following new subsection—
- (1) (1) Where the cabinet secretary makes an award and serves a notice on every person interested in the land, notifying of the specific day possession of the land and title to the land shall vest in the national or county government as the case may be, the acquiring public body may take possession of the respective land, provided that such taking of possession shall not occasion any person occupying the land to be rendered homeless.”
- (2) (2) Where there is an urgent necessity for the acquisition of land, and it would be contrary to the public interest for the acquisition to be delayed by following the normal procedures of compulsory acquisition under this Act, the acquiring public body may on expiration of fifteen days from the date of publication of the notice of intention to acquire, take

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- possession of the land in the manner specified under subsection (1), notwithstanding that no award has been made.”
- (3) Delete and substitute therefor the following new subsection—
- “(3) Upon taking possession of land under subsection (1) or subsection (2), the Cabinet secretary shall serve upon—
- (a) the Commission
 - (b) the registered proprietor of the land; and
 - (c) 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.”
- 121 Delete the word “Commission” and substitute therefor the words “Cabinet Secretary”
- 122 Delete the word “Commission” and substitute therefor the words “Cabinet Secretary”
- 123(1) Insert the words “the Cabinet Secretary in consultation with” immediately after the words “under this Act,”
- 124(1) Delete and substitute therefor the following new subsection—
- “(1) Where the Cabinet Secretary is satisfied that the possession of any land is required by a public body for a particular period not exceeding five years, possession of such land may be taken for that period under this section if—

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- (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 defense, public safety, public order, public morality, public health, urban and planning, or the development or utilization of any property in such manner as to promote the public benefit; and
- (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,
- (2) (a) By deleting the word “Commission” wherever it appears in sub-section (2) and substituting therefor the words “Cabinet Secretary”
- (3) Delete and substitute therefor the following new section—
- “(3) At the end of seven days after notices have been served under subsection (2), the acquiring public body may take possession of the land by entering, by representatives 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.”
- 126 Insert the words “Cabinet Secretary in consultation with the” immediately

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- after the words “if the” appearing in the opening statement.
- 127 Insert the words “Cabinet Secretary in consultation with” immediately after the words “The” appearing in the opening statement.
- 129 Insert the words “the Cabinet Secretary in consultation with the” immediately after the expression “(29) The”.
- 130 Insert the words “Cabinet Secretary in consultation with the” immediately after the words obstructs the“
- 131(e) Insert the words “the Cabinet Secretary in consultation with the” immediately after the words “the” appearing in the opening statement.
- 133 Insert the words “the Cabinet Secretary in consultation with the” immediately after the expression “(133) The”.

PART V Insert the following new PART immediately after section 54—

PART VIII A —THE LAND ACQUISITION COMMITTEE

Establishment of the Land Acquisition Committee.

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

(2) The Committee shall comprise—

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

(b) two registered valuers with at

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least ten years' experience in statutory valuation in a public body;

- (c) one licensed surveyor of at least ten years' standing; and
- (d) one person with extensive knowledge and experience in the informal sector representing the public.

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

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

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

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

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

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

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Functions of the
Committee.

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

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

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

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

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

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

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

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

Appeals.

133C. (1) A party to an application to the Committee who is dissatisfied with the decision of the Committee may appeal to the Environment and Land Court on the grounds that—

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

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

Limitation of liability.

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

Land
Registration
Act

56(4)

Delete and substitute therefor the following new subsection—

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

5A

Delete.

59

Delete the word “borrower” appearing on the first line and substitute therefor with the word “lender”.

MEMORANDUM OF OBJECTS AND REASONS

The Land Laws (Miscellaneous Amendments) Bill, 2023 seeks to make variety of amendments to laws that relate to land to enhance efficiency in matters relating to grants and dispositions, and compulsory acquisition of land.

The Bill contains amendments to the following statutes.

THE LAND REGISTRATION ACT, NO. 3 OF 2012

The Bill proposes to amend the Land Registration Act, no.3 of 2012 to amend section 56 to provide that the registrar shall not register a charge where land rent has not been paid.

THE NATIONAL LAND COMMISSION ACT, NO. 5 OF 2012

The Bill proposes to amend the National Land Commission Act, No. 5 of 2012 to remove time limits to review all grants and dispositions of public land and to allow continuous receipt of historical land injustice claims to be heard after the year 2026 by upholding the provisions beyond the ten years stated.

THE LAND ACT, NO. 6 OF 2012

The Bill proposes to amend the Land Act no.5 of 2012 to introduce amendments relating to general conditions relating to leases, licenses and agreements for public land to introduce new provisions to regulate rent for the several periods and valuation of land for rent. in addition, the bill seeks to amend provisions relating to compulsory acquisition of interests in land.

Statement on delegation of legislative powers and limitation of fundamental rights and freedoms

This Bill does not delegate legislative powers neither does it limit fundamental rights and freedoms.

Statement on whether the Bill affects county governments

This is Bill concerns county governments in terms of Article 110(1) (a) of the Constitution as it does not affect the functions and powers of county governments as set out in the Fourth Schedule to the Constitution.

Statement on the financial implications of the Bill

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 10th October, 2023.

KIMANI ICHUNG'WA,
Leader of Majority Party.

Section 28 of No. 6 of 2012 which it is proposed to amend—

Rents and other payments

28. (1) The rent, royalties and payments reserved under any lease or licence shall be a debt owed to the national or county government, as the case may be, and shall be paid by the lessee or licensee at the office of the respective government or at such place as such government 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 records of the payments made under subsection (2) shall be submitted to the Commission by the respective government.

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

Preliminary notice

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

(3A) Where the Commission rejects a request of an acquiring authority in accordance with subsection (3), the Commission shall inform the relevant acquiring authority within fourteen days of the decision to reject the request.

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

- (a) cause the affected land to be mapped out and valued by the Commission using the valuation criteria set out under this Act; and
- (b) establish that the acquiring authority has identified the number and maintains a register of persons in actual occupation of the land, confirming for each such occupation how much time they have been in uninterrupted occupation or ownership of interest

in the land prior to the date of the request for acquisition of the land, and the improvements thereon.

(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.

(5A) The notice issued under subsection (5) shall contain the following particulars—

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

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

(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 107 to 133, 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.

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

Criteria for assessing value for compulsorily acquired freehold land

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

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

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

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

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

- (a) the increase in the value of land is occasioned by the intended use or development of the land to be acquired;
- (b) the increase in the value of the land as at the date of publication of the notice of intention to acquire it is likely to accrue from the use to which the land will be put when acquired;
- (c) the increase in the value of the land is occasioned by any development or improvement to the land if—
 - (i) the improvement was made on the land within two years prior to the date of publication in the *Gazette* of the notice of intention to acquire the land, unless it is proved that the improvement was made *bona fide* and not in contemplation of proceedings for the acquisition of the land:

Provided that where the national government or the county government makes changes in the use of the land compulsorily acquired to affect other land owners, these owners shall be excluded from the application of this provision.

- (ii) the improvement was done after the date of publication in the *Gazette* of the notice of intention to acquire the land, unless the improvements were necessary for the maintenance of any building in a proper state of repair and are not capital improvements.
 - (iii) the improvement is contrary to any law or is detrimental to the health of the occupiers or to public health generally.

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

- (a) the degree of urgency which has led to the acquisition;
- (b) any inconvenience caused to a person interested in the land; or
- (c) damage which is likely to be caused to the land after the date of publication in the *Gazette* of the notice of intention to acquire the land or in consequence of the intended land use;

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

- (a) damage sustained or likely to be sustained by persons interested at the time of the Commission's taking possession of the land by reason of severing the land from other land;
- (b) damage sustained or likely to be sustained by persons interested in the land at the time of the Commission's taking possession of the land injuriously affecting other property, whether movable or immovable or in any other manner affecting the person's actual earnings;
- (c) if, in consequence of the acquisition, any of the persons interested in the land is or will be compelled to change residence or place of business, the payment of reasonable expenses to be determined by the Commission;
- (d) damage genuinely resulting from diminution of the profits of the land between the date of publication in the *Gazette* of the notice of intention to acquire the land and the date the Commission takes possession of the land; and
- (e) the effect of any express or implied condition of title or law which restricts the intended land use.

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

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

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

residence or place of business, the payment of reasonable expenses to be determined by the Commission.

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

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

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

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

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

Section 107B of No. 6 of 2012 which it is proposed to amend—

Criteria for assessing value for compulsorily acquired leasehold land

107B. (1) Where the lessee of a public land is in breach of any term or condition of the grant, the land shall revert back to the national or county government as provided for under this Act.

(2) In assessing the value of the leasehold land and determining the just compensation to be awarded for land acquired under this Act, where the lessee of a public land has complied with all the conditions of the grant, the following matters shall be taken into consideration—

- (a) the value of the land based on the unexpired term of the lease calculated on the basis of a land value index developed for that purpose by the Cabinet Secretary in consultation with county governments and approved by the National Assembly and the Senate;
- (b) the value of developments or improvements on the land and any other cost incurred on the basis of the terms and conditions of the grant; and
- (c) any other criteria which the Commission may prescribe in Regulations in consultation with the Cabinet Secretary and county governments and with the approval of the National Assembly and the Senate.

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

Power of entry to inspect land

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.

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

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).

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

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.

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

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 form 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.

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

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.

Section 115 of No. 6 of 2012 which it is proposed to amend—

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.

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

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

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.

Section 117 of No. 6 of 2012 which it is proposed to amend—

Payment of interest

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

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

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

Final survey

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

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

Section 120 of no.6 of 2012 which it is proposed to amend—

Formal taking of possession

120. (1) After an award has been made, the Commission may take possession of the respective 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 government as the case may be, provided that such taking of possession will not result in persons being rendered homeless.

(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 the 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.

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

Surrender of documents of title

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.

Section 122 of no.6 of 2012 which it is proposed to amend—

Acquisition of other land on account of severance

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

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

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

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

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

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

Section 123 of No. 6 of 2012 which it is proposed to amend—

Withdrawal of acquisition

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.

Section 124 of No.6 of 2012 which it is proposed to amend—

Power to obtain temporary occupation of land

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, 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 take possession of the land by entering, personally or by agents, on the land and positing 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.

Section 125 of No.6 of 2012 which it is proposed to amend—

Payment of compensation

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

Section 126 of No.6 of 2012 which it is proposed to amend—

Compensation for damages

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

Section 127 of no.6 of 2012 which it is proposed to amend—

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.

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

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.

Section 130 of no.6 of 2012 which it is proposed to amend—

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.

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

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

Section 132 of No.6 of 2012 which it is proposed to amend—

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.

Section 56 of No.3 of 2012 which it is proposed to amend—

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, certifying that no rent is owing in respect of the land, and the consent to charge has been presented, or unless the land is freehold.

(5) A charge shall have effect as a security only and shall not operate as a transfer.

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

- (a) a unit in a condominium;
- (b) an office in a building; or
- (c) a sub-lease where the lease is by virtue of any law subject to the full payment of the rent by the head-lessor.

(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 of the chargee's 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.

Section 56 of No.3 of 2012 which it is proposed to amend—

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.