

## LAND REGULATIONS

### ARRANGEMENT OF REGULATIONS

#### PART I—PRELIMINARY

1—Citation

2—Interpretation

**IN EXERCISE** of the powers conferred by section 160 of the Land Act, the National Land Commission and the Cabinet Secretary make the following Regulations—

#### PART I—PRELIMINARY

Citation.

1. These Regulations may be cited as the Land Regulations, 2017 and shall come into force on such date as the National Land Commission and Cabinet Secretary may by notice in the gazette, appoint and different dates may be appointed for different parts of the Regulations.

Interpretation.

2. In these Regulations unless the context states otherwise requires—

“Act” means the Land Act, No 6 of 2012;

“Ballot paper” means specified under regulation... ;

“Base map” means a topographical map depicting the natural and man-made features of the land;

“Board” means the Land Settlement Fund Board of Trustees established under Section 135 of the Act

“Committee” means the Sub-county Selection Committee as established by sec.134(4) of the Act;

“controlled land” has the meaning as assigned to it in section 12A.(1) of the Act;

“Large Scale Land Investments”

“Legal documents” means the Letter of offer, the charge document, the ancillary agreement, the discharge of charge and the transfer issued under settlement programme; “internally displaced person” means a person who has been forced or obliged to flee or to leave their home or place of habitual residence as a result of or in order to avoid the effect of armed conflicts, large scale developments projects, situations of generalized violence, violation of human rights or natural or human

made disasters and has not crossed an internationally recognized State boarder.

“Substantial transactions” has the meaning as assigned to it in section 2 of the Act.

## **PART II— MANAGEMENT AND CONVERSION OF PUBLIC LAND**

### *Pre-conversion procedure*

Identification of land to be converted.

**3.** (1) If the national or county government, as the case may be, either on receipt of a request or on own motion intends to convert land from one category to another as provided for in section 9 of the Act, it shall identify the land and notify the Commission in the prescribed Form No. ....

(2) The notification provided for in sub-regulation (1) shall be accompanied with a base map showing the location of the respective land.

Commission to satisfy itself of the viability of an application

**4.** (1) Upon receipt of the notification, the Commission shall satisfy itself—

- (a) that the conversion is in compliance of section 8 of the Act, and in particular, that the land concerned is, at the time of the intended conversion, public land;
- (b) that the purposes for which it is intended to be used are compatible with land use planning for the respective area;
- (c) that the land is not part of an ecologically sensitive area;
- (d) that the conversion complies with any other provisions of the Act or any other law; and
- (e) that the land does not fall within controlled land as set out in section 12A. (1) of the Act;

(2) Upon taking into account the matters set out under sub regulation (1), the Commission shall—

- (a) In the case of a substantial transaction refer the matter to the National Assembly or county assembly for approval; and
- (b) In the case of a transaction which is not substantial, invite public consultations in accordance with regulation 6.

Determination of what amounts to a substantial transaction.

**5.** (1) For purposes of Section 9 (3) of the Act, the following factors shall be taken into account in determining whether any conversion of public land into private land is a substantial transaction requiring approval of the National Assembly or county assembly—

- (a) market value;
- (b) location;
- (c) size;
- (d) cultural and historical value;
- (e) environmental importance/impact;
- (f) national interest;
- (g) level of investment; or
- (h) any other factors that may be considered significant.

(2) The Commission shall, upon taking into account the factors set out in sub regulation (1) determine whether any given conversion amounts to a substantial transaction.

(3) Upon receipt of approval from the National or County Assembly, the Commission shall convert the land accordingly and enter the particulars in the register as required under section 9 (4) of the Act.

Public consultation

**6.** (1) With respect to conversions which do not amount to substantial transactions, the Commission shall, upon receipt of the notification from the national or county government and upon satisfying itself of the viability of the conversion, initiate public consultations on the intended conversion.

(2) The public consultations shall be initiated by placing a notice in, at least two daily newspapers of nation-wide circulation, one county newspaper and affix a notice at the County and sub-county headquarters, Wards, strategic places within the vicinity of the land and make an announcement of the notice in both official and local languages in a radio with nationwide coverage; inviting comments on or objections on the intended conversion of public land into private or community land.

(3) The notice referred to in sub-regulation (2) shall—

- (a) Contain a description of the property in issue;
- (b) Provide the nature of conversion including particulars of the person or persons to whom the land is intended to be converted;
- (c) Specify the date, venue and time of the public consultations; and

(d) Allow for representations to be received within 15 days.

(4) Upon receipt of the representations from the public on the intended conversion, the Commission shall—

- (a) Analyze the representations and ascertain the general feeling of the public;
- (b) Take into consideration all other matters required under this act or any other law; and
- (c) Determine whether based on the considerations referred to under paragraph (a) and (b) the conversion ought to be approved.

(5) If the Commission approves intended conversion of the land, it shall proceed to convert the land

Planning and surveying of the land intended to be converted

**7.** The Commission shall ensure that all the public land intended to be converted is planned, surveyed, geo-referenced and serviced before commencement of the conversion.

Conversion of Public Land to Community Land

**8.** (1) Where public land is to be converted to community land the county government shall present an application to the Commission in the prescribed Form No LA..... Requesting for conversion of land from public land to community land.

(2) The commission shall satisfy itself that:-

- a) such land is public land; and
- b) The land shall be used for the benefit of the community as provided under Article 63 of the Constitution

(3) The Commission shall consult the public by inviting comments on or objections to its intention to convert public land into community land by placing a thirty days notice in:-

- a) Two countrywide circulating newspapers and one locally circulating newspaper if any;
- b) Affix notices at the offices of the headquarters of the respective County and Sub County, Wards and in strategic places on the vicinity of the site; and
- c) Make an announcement of the notice in both official and local

languages in a radio with nationwide coverage.

(5) In cases where there are objections from the stakeholders and the Commission is satisfied that the objections are reasonable, the Commission shall notify the County government.

(6) The Commission shall then publish a notice in the Kenya Gazette of the conversion of the public land to community land.

(7) The Commission shall advise the land registrar to enter the conversion in the community land register.

Methods of converting Public  
Land to Private Land

**9.** (1) Public Land may be converted to private land under section 9 (2) (a) of the Act, by way of alienation which under section 12 (1) of the Act, shall include—

- (a) public auction;
- (b) application confined to a targeted group of persons or groups;
- (c) public notice of tenders;
- (d) public drawing of lots
- (e) public request for proposals
- (f) public land exchange of equal value.

(2) In determining the method of allocation when converting public land into private land, the Commission shall, in consultation with the respective county government, take into consideration all prevailing circumstances including the purpose for which the conversion is being made

*Public auction*

Commission to appoint an  
auctioneer Notice of the auction.

**10.** The Commission shall appoint as its agent, by name, a licensed auctioneer for all or each parcel of land available for auction.

**11.** The Commission shall publish a notice in at least two daily newspapers of nation-wide circulation, one local newspaper and affix the notice at the county, sub-county and ward offices, which shall contain—

- (a) the date of the auction which shall not be less than one month from

the date of the publication of the notice;

- (b) the description of the property;
- (c) the reserve price (stand premium);
- (d) the date, time and venue of the auction;
- (e) the amount to be paid at the fall of the hammer; and
- (f) the terms and conditions of allocation.

Conduct of the auction.

**12.** (1) Every auction shall be conducted by the agent in the presence of an authorized officer of the Commission.

(2) The agent shall declare as winner the name of the highest bidder if the bid is higher than the reserve price.

(3) The winner of the Bid shall at the fall of the hammer, pay the Commission the full amount of the bid or percentage mentioned in the notice.

(4) The amount to be paid at the fall of the hammer shall be 25% of the stand premium.

Winner of the bid to be given a certificate of sale.

**13.** (1) The agent shall immediately on the fall of the hammer issue a certificate of sale using Form No....of the schedule signed by the agent to the winner of the bid as evidence of the sale.

(2) The winner of the bid shall present the certificate mentioned in sub-regulation (1) to the Commission for issuance of the letter of allocation in Form No.....after which the outstanding balance shall be paid within ninety days.

Procedure when the reserve price is not met.

**14.** If the reserved price is not met by the bidders, the agent shall declare that fact and the auction shall be repeated on a subsequent occasion(s) until a winner is found.

*Allocation to targeted groups or persons.*

Vetting of targeted group or persons.

**15.** (1) Where the National or County Government is satisfied it is necessary to allocate land to a targeted group so as to ameliorate the group's disadvantage pursuant to section 12 (b) of the Act, the National or County Government shall vet the targeted group to ascertain the exact nature of the groups' disadvantaged position.

(2) The National or County Government shall in ascertaining the disadvantaged

position of the group under sub regulation (1) have regard to—

- (a) aspects of gender and equity;
- (b) persons with disabilities
- (c) social imbalances and injustices;
- (d) historical injustices; and
- (e) economic and cultural marginalization.

(3) The National or County Government shall prepare a report on the disadvantaged nature of the group and recommend allocation of the identified land to ameliorate the group’s disadvantaged position.

(4) The Commission shall study the report and if satisfied reserve the recommended land to be implemented as provided for in Section 134 of the Act.

*Allocation by way of tenders*

Commission to invite bids.

**16.** The Commission shall invite bids for tenders by publishing a notice using Form No..... at the County, sub county and ward offices and where applicable in, two daily newspapers with nationwide circulation and one local newspaper at least two months before the date of the opening of the bids

Details of the notice inviting bids

**17.** The notice inviting the bids with respect to each tender shall specify—

- (a) the sale number;
- (b) bidding information including—
  - (i) the particulars of the parcel or parcels on offer;
  - (ii) the date and time for submission of the bid registration form;
  - (iii) the bid submission closing date and time; and
  - (iv) the bid opening time.
- (c) a schedule of the list of properties with the item number for bidder reference;
- (d) property inspection places and time;
- (e) bidder registration requirement as well as contact person(s) or place(s) and times at which bidders can register and obtain bid forms; and

(f) any other specific terms and conditions of sale.

Receipt of the bids.

**18.** (1) Every tender shall be in a sealed envelope and on receipt shall be placed unopened in a closed and sealed box provided for that purpose.

(2) Where a Bid is received by an officer authorized to receive the bids, the officer shall immediately stamp the envelope with an official date stamp and shall place the bid in the box mentioned in sub-regulation (1).

Closing of bids.

**19.** (1) On the closing of the bids, the authorized officer of the Commission shall clear the sealed box containing the bids and the bids shall be opened by the authorized officer in the presence of at least one other member of the Commission.

(2) Where the bids are to be opened in the presence of the bidders, that fact shall be included in the notice inviting the bids.

Commission to prepare list of bids and the bidders

**20.** (1) The bids shall be numbered consecutively (the last one being endorsed with the word “last”) and initialed by the authorized officer witnessed by at least one other member of the Commission.

(2) A list, in triplicate, of the bids showing the number of the bid and the name of the bidder shall be prepared and signed by both the persons mentioned in sub-regulation (1) and—

(a) the original list shall be retained by the authorized officer for eventual incorporation in the minutes;

(b) the duplicate list shall be retained by the witnessing member; and

(c) the triplicate list shall be forwarded to the accounting officer of the County government or National Government as the case may be.

Selection of the winning Bid.

**21.** (1) The Commission shall meet within two official working days of the date of opening of the bids to select the winning bid.

(2) Where the Commission feels that it is not in the public interest to award the tender to the highest bidder it shall refuse the bid with reasons which shall be recorded in the minutes.

(3) Minutes of the meetings shall be recorded by the secretary and signed by the chairman

Notification of the successful bidder.

**22.** Within seven days of the meeting of the Commission, the secretary shall notify the successful bidder and shall also notify each unsuccessful bidder of



the non acceptance of their bids and the details of the successful bid.

Payment of the purchase price.

**23.** The successful bidder shall pay to the Commission the whole amount of the purchase price in case of a freehold and stand premium in case of a leasehold within ninety days of the date of the Commission's letter of notification.

Cancellation of tender.

**24.** (1).The Commission may cancel or amend in whole or in part the tender for the sale of any property at any time and for any reason without incurring liability.

(2) Without limiting the generality of sub-regulation (1), the Commission may cancel the tender if the Commission —

- (a) receives information of or suspects any collusion among bidders;
- (b) suspects the use of coercion or threats by a bidder or bidders to dissuade the submission of bids by others or to affect the contents of another bidders' bid; or
- (c) Suspects any improper activity performed in connection with the tender by any person.

Commission not to be liable for any losses on cancellation

**25.** (1) Subject to the provisions of sub-regulation (2), where the Commission cancels the Tender, the Commission shall not be held responsible for any costs or liabilities incurred by any bidder or third parties.

(2) If the Commission cancels the tender, all bid deposits received and any other funds received (except for the non-refundable bid submission fee) shall be returned within fourteen days of the date of cancellation.

A member of the Commission to disclose any conflict of interest

**26.** (1) A member of the Commission who has an interest in the tendering process before the Commission shall disclose that interest and exclude himself or herself, as the case maybe, from the above process.

(2) A Member of the Commission who fails to disclose any existing conflict of interest commits an offence and is liable to a fine based on the value of the subject matter and loss of any benefit accrued from the tendering process in issue.

#### *Allocation by Public drawing of lots*

Commission to shortlist the applicants

**27.** On receipt of the applications, the Commission shall review the applications and shortlist the applicants in accordance with the following criteria—

- (a) evidence of financial capacity to develop the parcel;
- (b) citizenship;

- (c) proof of prior possession of the land where applicable;
- (d) in case of residential plots, preference will be given to residents of the particular urban area who have no other residential accommodation; and
- (e) any other criteria set by the Commission.

Preparation of lots

**28.** (1) The Commission shall prepare lots equivalent to the number of the shortlisted applicants.

(2) The lots to be used in the draw shall be in the prescribed Form LA No..... and shall have the following particulars—

- (a) either the Parcel No. of the subject land for the affirmative lots, or the words ‘not successful’ for the negative lots;
- (b) blank spaces to fill in Name, I.D no./passport no. of successful applicants; and
- (c) the name and signature of the presiding officer

(3) Affirmative lots shall be equivalent to the available parcels of land.

Balloting to be conducted in public

**29.** (1) The balloting shall be conducted in public and witnessed by an officer from the Betting Control and Licensing Board.

(2) The presiding officer shall fill in the particulars of the successful allottee on the ballot paper and append his/her name and signature.

(3) The presiding officer shall immediately enter the particulars of the successful allottees in the register kept by the Commission pursuant to section 9 (4) of the Act.

(4) The Presiding officer shall issue a certificate to the successful applicant in the prescribed Form LA.....

(5) the Commission shall compile a report which shall consist of

- (a) minutes of the allocation process meeting
- (b) list of beneficiaries
- (c) copies of notices

Commission to issue letters of allotment

**30.** (1) On the completion of the allocation processes the Commission shall issue letters of allotment to the beneficiaries and shall publish a notice in two country wide circulating dailies, one locally circulating newspaper where

applicable, and at the headquarters of the respective county.

(2) The notice shall have the following particulars—

- (a) a list of the beneficiaries;
- (b) a requirement of the beneficiaries to physically collect their letters of allotment from the Commission's County offices; and
- (c) The date and place where the allocation was done.

(3) The letter of allotment shall contain the details of the offer including—

- (a) the name, Identification Number and address of the allottee
- (b) the particulars of the parcel of land on offer including the parcel number, size, location and term of lease;
- (c) the purchase price where applicable;
- (d) the time within which to pay the purchase price; and
- (e) Applicable special conditions.

Commission to invite public proposals

*Public request for proposals.*

**31.** The Commission may invite the public for proposals on utilization or development of land.

The Commission shall—

- (a) Notify the public by issuing at least thirty days notice in a newspaper with nationwide circulation; .
- (b) Specify in the notice details, the terms of reference and requirements of the proposal.
- (c) Specify the mode, method and process of submission of the proposals;.
- (d) Determine the best proposal based on specific factors and inform the public of its intention to enter into partnership with the successful applicant(s).

Reservation of land for investment purposes at the request of the county

*Reservation of land for investment purposes*

**32.** (1) Pursuant to section 12(3) of the Act, the Commission shall upon the request of the national or a county government reserve land for investment purposes.  
(2) the national or county governments shall submit the application to the

Commission in the prescribed Form No.....requesting for the reservation of the land.

(3) In determining the suitability of land to be reserved for investment purposes, the Commission shall consider the following;-

- (a) whether the land is public, community or private land;
- (b) size and suitability for development;
- (c) Availability of relevant infrastructure; and
- (d) The proposed development is in conformity with the Development plans and development conditions of the land.
- (e) The application shall be accompanied by a base map indicating the location of the land.
- (f) The Commission shall satisfy itself that the land proposed for reservation is not within an ecologically sensitive area as set out under Section 12 (4) of the Act.

(4) The Commission shall initiate public consultations by placing a notice in, at least two daily newspapers of nation-wide circulation, one local newspaper and affix notices at the County, Sub County and ward offices inviting comments on or objections on the intended reservation of public land.

(i) The notice referred to in sub-regulation (4) shall—

- (a) contain a description of the property in issue;
- (b) specify the date, venue and time of the public consultations; and
- (c) Allow for not less than thirty days period for making the representations.

(ii) .Upon receipt of the representations from the public on the intended reservation, the Commission shall—

- (a) analyze the representations and ascertain the general feeling of the public;
- (b) take into consideration all other matters required under this Act or any other law; and
- (c) Determine whether based on the considerations referred to under paragraph (a) and (b) the reservation ought to be approved.

Allocation of land for investments

**33.** (1) Where the Commission is satisfied that all the conditions set in regulations 33 have been complied with it shall advise the National and County Governments to carry out planning, survey and servicing of the land

(2) Allocation of land to investors within the reserved land will be done as set out in regulation 3 to 32.

Application for allocation of land by a public body.

**34.** (1) Where any public institution intends to be allocated public land or is in actual occupation it shall lodge an application with the Commission to have the land formally allocated and registered in its name.

(2) In considering an application under sub regulation (1), the Commission shall—

- (a) satisfy itself that there is merit in the application and that such land is available;
- (b) consult and seek views of the county/national government; and
- (c) require the land to be planned, surveyed and the necessary services provided.

Title document for public entities.

**35.** The Commission shall, subject to the law governing the management of public entities, issue title certificate and other title documents—

- (a) in the case of an incorporated public entity, in the name of the entity, the national treasury, or other body authorized by law;
- (b) in the case of unincorporated entity, in the national treasury, or other body authorized by law; or.
- (c) in accordance with the relevant national government law on registration of land or assets.

Regularizing of existing allocation in urban areas by defunct local authorities

**36.** (1) Allocation of land made under any of the repealed Acts may be regularized by the Commission through registration pursuant to section 7 (i) of the Act

(2) Without limiting the generality of the foregoing, the Commission if satisfied that an occupier of public land was lawfully allocated land by former local authorities in accordance with the repealed Acts and remains unregistered, it shall formally allocate the land.

(3) The Commission shall satisfy itself that —

- (a) the land is unalienated public land;

- (b) the land does not fall within an ecologically sensitive area as set out under section 12 (2) of the Act;
- (c) the approval of the Cabinet Secretary shall be obtained where the land falls within controlled land as set out in section 12A. (1) of the Act; and
- (d) ensure that the land is planned, surveyed and serviced;

(4) The Commission shall issue requisite documents in accordance with regulation No.....

Allocation of public land by public exchange

**37.** (1) The Commission may allocate public land through the process of public exchange, pursuant to section 12 (1) (f) of the Act.

(2) Where a private land is required for a public purpose, the Commission may, at the request of the county or national government, exchange the private land with another public land of equal value.

(2) Upon receipt of the request under sub regulation (2), the Commission shall establish the viability of the request and—

(a) approve or disapprove the request;

(b) upon approval, execute a deed of exchange or transfer in prescribed Form No .....(refer to the Land Registration Forms) on behalf of the National or County Government, on the one part and the registered proprietor, on the other part.

(3) Upon the execution of the deed of exchange, the Commission shall forward it to the land Registrar where the proprietor shall surrender the original title in exchange of another one for the exchanged parcel of land.

(4) The Commission shall facilitate the issuance of the respective titles and the conveyance fees shall be borne by the benefiting institution.

#### *Controlled Land*

Allocation of Controlled Land

**38.** (1) The Cabinet Secretary shall identify and establish an inventory of all controlled land within the country

(2) All applications involving transactions on Controlled Land shall be made to the Cabinet Secretary

(3) The application Sub-section (2) above shall be in prescribed Form LA

No.....

(4) Upon receipt of an application for allocation of land within controlled land as described in section 12A. (1) of the Act, the Cabinet Secretary shall seek the approval of relevant authorities.

(5) All other transactions within controlled land shall be subject to the approval of the Cabinet Secretary in prescribed form LA No. ....which shall be forwarded to the Commission for further processing

Commission to issue an allotment letter.

**39.** (1) The Commission shall issue a letter of allotment in prescribed Form LA. No... to the party that has been successfully allocated land under Part III and IV and who presents the certificate of sale issued by the Auctioneer or the Ballot form issued by the presiding officer.

(2) The allottee shall pay fees within the period provided in the Allotment Letter which shall not be more than 90 days from the date of the issuance of the letter of allotment.

(3) Fees demanded in the letter of allotment shall be paid in the name of the Commission in an account to be opened by the Commission

Preparation of leases on public land

**40.** (1) The Commission shall prepare and execute leases emanating from allocation of public land as per section 12 of the Act.

(2) The Commission shall request for three copies of the cadastral plan and cadastral map in prescribed Form LA.....from the Director of Surveys.

(3) Upon receipt of the cadastral plan / map , a lease document in the prescribed Form LA..... shall be executed by designated officer (s) of the Commission duly gazetted on behalf of the County or National Government.

(4) The executed Lease document and the cadastral map / plan shall be forwarded to the Chief Land Registrar for registration and issuance of Certificate of Lease to the Proprietor.

(5) The Commission shall forward the documents in sub-section (4) above to the Chief Land Registrar in the prescribed Form LA No.....

#### *Reservation and Development of Public Land*

reservation and development of public land

**41.** (1) Pursuant to section 15 (1) of the Act, the Commission shall upon request by the national or county government by order in the gazette reserve public land, using prescribed Form L.A.No .....

(2) The Order shall state the purpose for which the land is being reserved and

shall be attached with a cadastral map in prescribed Form No..... which shall also be published in the same gazette supplement the Order is published.

(3) The Commission may vest the care, control and management of the reserved land to a statutory body, public corporation or agency using prescribed Form L.A No.....

(4) The public agencies, statutory bodies and state bodies vested with the control, care and management of reserved land shall carry out its mandate in accordance with the guidelines in Schedule ..... prescribed by the Commission in accordance with section 10 of the Act.

Inventory of Public Land vested  
in public entities

**42.** (1) The Commission shall require the public institutions to submit an inventory of all land under control and actual occupation

(2) The inventory shall contain the following particulars—

- (a) location;
- (b) name of the entity;
- (c) size of the land;
- (d) current use of land;
- (e) management plans stipulated in section 17 (1) of the Act;
- (f) types of natural resources, if known; and
- (g) Value of land including any development thereon.

(3) The Commission shall conduct annual inspections to ensure that developments on public land are in accordance with the relevant development, management and land use plans.

(4) If upon inspection the Commission establishes that conditions of development, management and land use have been breached, a notice of not more than sixty days specifying the actual breach and actions to be taken to remedy the breach may be given by the Commission.

(5) If a management body fails to comply with the notice, penalties may be imposed including—

- (a) making good the damage;
- (b) fine;



(c) revocation of management order; and

(d) any other penalty prescribed under any law.

(6) All management bodies shall ensure that the interests of local communities and the national values and principles of governance set out under Article 10 of the Constitution are observed.

Variation Order

**43.** (1) The Commission may vary the conditions of care, control or management of public land attached to the Vesting Order mentioned in Regulation 41, by publishing an order in the Gazette using prescribed Form L.A.No.....

(2) Where the variation will affect not only the respective agency, statutory body or State or county corporation but also a third party, the Commission shall, in accordance with section 16 (3) of the Act, notify the third party of the intended variation before publishing the variation Order in the Gazette using prescribed Form L.A.No.....

(a) setting out the details of the proposed variation;

(b) how they are to affect the third party; and

(c) Inviting the third party to make submissions within fifteen days from the date of the notice.

(3)The Commission shall consider the submissions and give a feedback to the affected third party within seven days of receipt of the submissions.

Revocation Order

**44.** The Commission may revoke the management Order provided for in Regulation 41 by Order published in the Gazette using prescribed Form L.A. No..... and shall set out in the Order the reasons for the revocation and any other conditions or directions to be complied with by the respective body, agency or state corporation.

Conservation of Land Based  
Natural Resources

**45.** (1) The National Land Commission shall require the National and County Governments ; and State Agencies to prepare an inventory of all land based natural resources vested with them

(2) The Commission shall:

a) Cause the national and county governments; and State Agencies to identify, survey and map all land based natural resources within their jurisdiction;

b) Require the National and County Governments; and State Agencies to prepare environmental action plans indicating the measures they intend

to undertake to protect the resources;

- c) Ensure that national and county governments; and relevant State Agencies protect the land based natural resources through appropriate land use development control measures;
- d) Require the national and county governments; and State Agencies to initiate participatory programmes for conserving land based natural resources; and
- e) Ensure that such conservation programmes confer due benefits to the contiguous communities.

(3) The Commission shall require the national and county governments; and relevant State Agencies embrace Alternative Dispute Resolution Mechanisms while dealing with conflicts arising from utilization and management of land based natural resources.

**PART III—ADMINISTRATION OF PUBLIC LAND**

*Licenses*

Issuance of licenses on public land.

**46.** (1) Applications for temporary occupation license shall be submitted to the Commission using the prescribed Form LA No.....

(2) Upon receipt of the application, the Commission shall, before granting the license, seek the consent of the relevant government.

(3) The Commission shall prescribe the fees payable for the license, which include rent and other requisite payments as the Commission may prescribe

(4) The Commission may on receiving the consent of the relevant government, grant a license in accordance with section 20 (1) of the Act to the applicant to occupy unalienated land using Form No LA.....

Notice to licensee to quit Public Land

**47.** (1) The Commission may, after the expiration of nine months from the date of granting the license, serve notice using Form No LA..... on the licensee to quit the public land.

(2) The notice shall require the licensee to remove any structures on the land within a specified period.

*Extension and renewal of leases*

Commission to maintain data base

**48.** The Commission shall maintain a data base of all public land including land under leasehold tenure.

Commission to notify lessee of the upcoming expiration of the lease hold

**49.** (1) Within five years before the expiry of the leasehold, the Commission shall notify the lessee by registered mail that the lease is about to expire and a copy of the notice shall be forwarded to the Cabinet Secretary or the relevant County Government as the case may be .

(2) The notice shall indicate the date of expiry and inform the lessee of the lessee's pre-emptive rights to apply for extension of the lease under Section 13 of the Act and to whom to make the application.

(3) If the lessee does not respond to the notification within one year, the Commission shall publish the notification on one newspaper of countrywide circulation and where to make the application.

(4) if the lessee does not respond to the notifications referred to in (1) and (3) above, the lessee shall be considered to have forfeited the pre-emptive right over the land and the land shall be deemed to have automatically reverted to the county government

Process of lease extension

**50.** (1) Application for extension of lease will be received at the office of the Commission. Upon receipt of the application, the Commission shall forward it to either the Cabinet Secretary or the County Executive Committee Member for lands as the case may be

(2) the following factors shall be considered by the national or the county government :

(a) if the lessee is a citizen, the National or County Government may require —

- (i) in the case of a company, the names of the directors and their citizenship status including a search from the Registrar of Companies showing the shares of each director; and
- (ii) clearance certificate from the relevant organ in relation to all land rates and rents;
- (iii) information whether the title to be extended will be subject to any existing encumbrance(s);

(iv) Proof that the lessee has complied with the terms and conditions of the existing lease.

(b) If the lessee is a non-citizen the above factors will apply. In instances of large scale investments, the National or County Government shall also ensure that—

(i) the extension or renewal is beneficial to the economy and the country as a whole;

(ii) that the investment purpose is in accordance with the national development goals and objectives;

(3) The National or County Government shall give the leaseholder a notification of at least three (3) years before the expiry of the lease of the intention not to renew the lease and copied to the Commission, where the National or County Government needs land for public purpose in accordance to section 13 and upon satisfying themselves that the land is included in the County Spatial Plan and cities and urban area plans under County Governments Act, 2012 and Urban Areas and Cities Act, 2011 respectively

Upon notification;

(a) the National or County Government shall carry out an inventory of the developments on the land;

(b) the lessee shall be required not to put up new developments or improvements thereon;

(c) the lessee shall be required to approach the respective government for compensation of the developments on the land

(4) the National or County Government shall before the approval of extension of the lease, seek representations from the following:-

(a) The County Executive Committee Member responsible for land.

(b) The County Surveyor

(c) The County Physical Planner,

(d) The Land Administration Officer of the Commission/ National Government , and

(e) Any other relevant authority

- (5) Upon receipt of the representations the National or County Government may—
- (a) Approve the extension of lease for a specified term; or
  - (b) Decline to extend the lease and give the lessee the reasons thereof within ninety days from the date of the application for extension.
- (6) the report in sub-section (5) above shall be forwarded to the Commission for consideration or implementation
- (7) Where approval of extension of the lease is granted, the Commission shall –
- i. have the land revalued to determine the payable land rent and other requisite fees
  - ii. have the land re-surveyed and geo-referenced
  - iii. Have the lessee surrender the existing title or lease certificate in consideration for a new lease.
- (8) where the extension of lease is declined by the National or County Government, the Commission shall refer the matter to an independent appeals committee established by the Commission
- (9) The Commission may not be bound by the recommendation in the report in sub-section (5)(a) above, if:
- (i) The land in question is required under compulsory acquisition
  - (ii) There is proof the development conditions have not been complied with

*Renewal of Expired Leases Without prior Notice by Commission*

Renewal of Leases

- 51.** (1) Where the term of the lease had expired without prior notice to the lessee as required in the Land Act, 2012, the Commission will require the lessee to apply for renewal of the lease. The following factors shall be considered by the Commission in determining whether to renew a lease—
- (a) if the lessee is a citizen, the Commission shall require —
    - (i) in the case of a company, the names of the directors and their citizenship status including a search from the Registrar of Companies showing the shares of each director; and
    - (ii) clearance certificate from the relevant organ in relation to all

land rates and rents;

(iii) information whether the title to be renewed will be subject to any existing encumbrance(s);

(iv) Proof that the lessee has complied with the terms and conditions of the lease.

(c) If the lessee is a non-citizen the above factors will apply. In instances of large scale investments, the Commission in consultation with the National and County Governments shall also ensure that—

(i) the renewal is beneficial to the economy and the country as a whole;

(ii) that the investment purpose is in accordance with the national development goals and objectives;

(2) The Commission shall carry out a site inspection to verify the status of developments.

Commission to seek for recommendations.

**52.** (1) The Commission shall before the renewal of the lease, seek representations from the following:-

(a) The County Executive Committee Member responsible for land,

(b) The Director of Surveys,

(c) The Director of Physical Planning,

(d) The Land Administration Officer of the Commission and National Government in the county, and

(e) Any other relevant authority

(3) Where favorable comments/recommendations for renewal of the lease are received, the Commission shall –

i. have the land revalued to determine the payable land rent and other requisite fees

ii. have the land re-surveyed and geo-referenced

iii. issue a new letter of allotment using prescribed Form No.....for the parcel and a new lease shall be issued in accordance with the provisions of the Act and these Regulations

(4) where the Commission receives objection against the renewal of lease from

the recommending authorities, the Commission shall require the said authorities to give reasons for the grounds of the objections within a period of thirty (30) days

(5) Where the National or County Government needs land for public purpose in accordance to section 13 and upon satisfying themselves that the land is included in the County Spatial Plan and cities and urban area plans under County Governments Act, 2012 and Urban Areas and Cities Act, 2011 respectively they shall give concrete justification to the Commission not to renew the lease

(6) The Commission may not be bound by the recommendation in the report in (4) above, if:

(i) The land in question is required under compulsory acquisition

(ii) There is proof the development conditions have not been complied with

Payment of Land Rent

**53.** (1) The Commission shall issue land rent demand notes to the lessees in accordance with the terms of a lease.

(2) Land rent shall be paid into a bank account designated by the National Land Commission

(3) In case of a property where the national government is the head lessor, the Commission shall remit such funds into the Consolidated Fund account and where the county government is the head lessor, the Commission shall remit such funds into the respective County Revenue Fund account.

Procedure for obtaining land rent clearance certificate

**54.** (1) Upon payment of the outstanding land rent, an application for the land rent clearance certificate shall be made on the prescribed Form No LA....

(2) Rent Clearance Certificate shall be issued in Form LA.....at the county office of the Commission where the land is registered or in any other means as may be determined by the Commission.

Application for consent to transfer, sublease or charge.

**55.** (1) Applications for consent to transfer, sublease or charge land shall be submitted to the Commission on the prescribed Form No LA....

(2) An application under sub regulation (1) shall be accompanied by—

(a) a rent clearance certificate;

(b) proof of compliance with the special conditions on the lease.

(3) The Commission shall conduct a site inspection to confirm any matter in relation with the land.

(4) The Commission shall—

- (a) give the consent in the prescribed Form No LA...;or
- (b) decline to give the consent and provide the applicant with reasons thereof.

(5) Where an application to transfer foreign Government -owned property is received the Commission shall refer the application to the Attorney General and the Ministry in charge of Foreign Affairs for confirmation that the transaction is sanctioned and approved by the respective foreign Governments in accordance with their laws.

(6) Where an application to transfer land owned by public institutions to private individuals or entities is received, the Commission shall require that such application be accompanied by confirmation from the Cabinet Secretary in charge of the institution that the transfer was done in accordance with the laid down procurement and disposal procedures.

#### **PART IV—CONVERSION OF FREEHOLD AND LEASEHOLD TENURE OVER NINETY-NINE YEARS OWNED BY NON CITIZENS**

The Commission to notify  
affected non-citizen land owners

**56.** The Commission shall notify non-citizens who possess leasehold titles that exceed ninety-nine years or hold freehold titles through a public notice published in the Gazette and in at least two newspapers with nationwide circulation—

- (a) of the intention to resurvey the parcels of land for purposes of issuance of ninety-nine year leasehold titles; and
- (b) of the dates when the affected parcels of land shall be resurveyed.
- (c) The Commission shall within five (5) years from the commencement of these regulations undertake the conversions of all freehold titles and leases exceeding ninety nine years held by non-citizens

Effective date of conversion

**57.** (1) The Chief Land Registrar shall cause an entry to be made on all registers of land owned by non-citizens that the term has been reduced to ninety-nine years with effect from 27<sup>th</sup> August 2010.

(2) The Commission shall cause the land to be re-surveyed, geo referenced and cadastral map/plan produced.



(3) Upon production of the original title any non-citizen holding land on freehold or on leasehold whose remainder period is more than ninety-nine years shall be issued with a leasehold title of a term of ninety-nine years; and

(4) All Government processing fees incurred under this process will be free on the Commission's Account

## **PART V: ADMINISTRATION OF PRIVATE LAND**

### *Approval of Subdivision/ amalgamation and building Plans*

Subdivision/amalgamation of private land (freehold)

**58.** (1) Application for subdivision/amalgamation of private land shall be submitted to the County Government with a copy to the Cabinet Secretary.

(2) The County Government shall ascertain the viability of the subdivision/amalgamation and may in that regard liaise with the relevant authorities including but not limited to—

- (a) The County Executive Committee member in charge of lands
- (b) Director of Surveys
- (c) Director of Physical Planning
- (d) The land administration officer of the Commission and of national government ;
- (e) Land Control Board where applicable; and
- (f) any other relevant authority

(3) Upon receipt of recommendations from the authorities in subsection (2) above, the County Government shall refer the application to the Cabinet Secretary within 30 days for consideration.

(4) where approval from the County Government is not granted, the County Government shall notify the applicant in writing of its decision within 30 days, and shall specify the conditions, if any attached to the development permission granted, or in the case of refusal to grant the permission, the grounds for refusal

(5) Upon fulfillment of the conditions set out in subsection (2) and (3) above, the Cabinet Secretary shall—

- (a) require a survey to be carried out and a cadastral map/ plans prepared,

Subdivision / amalgamation of private land (leasehold)

(b) Prepare resultant titles for subdivision/amalgamation

**59.** (1) Application for subdivision/ amalgamation of leasehold land will be received at the office of the Commission. Upon receipt of the application, the Commission shall within 7 days forward it to either the Cabinet Secretary or the County Executive Committee Member for lands as the case may be

(2) the National or County Government shall before the approval of the subdivision/amalgamation, seek representations from the following:-

(a) The County Executive Committee member in charge of lands;

(b) Director of Surveys;

(c) Director of Physical Planning;

(d) The Land Administration Officer of the Commission and of National Government;

(e) Land Control Board , where applicable, and

(f) Any other relevant authority

(3) Upon receipt of the representations, the National or County Government may—

(a) Approve the application ; or

(b) Decline to approve the application

(4) where the approval from the County Government is not granted, the County Government shall notify the applicant in writing of its decision within 30 days, and shall specify the conditions, if any attached to the development permission granted, or in the case of refusal to grant the permission, the grounds for refusal

(5) the approval in sub-section (3) above shall be forwarded to the Commission for consideration or implementation

(7) Where approval of subdivision/amalgamation is granted, the Commission shall

—

i. have the land re-surveyed and geo-referenced

ii. have the land revalued to determine the payable land rent and other requisite fees

iii. prepare sub-division/amalgamation approval letters

(8) The Commission shall prepare leases for the sub-plots and forward them to the Chief Land Registrar for registration in prescribed Form LA.....

Change/extension of user  
(freehold)

**60.** (1) Application for change or extension of user shall be submitted to the national government or relevant county government

(2) Upon receipt of the application, the national or county government shall ascertain the viability of the application and may circulate the application to the relevant authorities including but not limited to—

(g) The County Executive Committee member in charge of lands

(h) Director of Surveys

(i) Director of Physical Planning

(j) The land administration officer of the national government ;

(k) Land Control Board where applicable; and

(l) Any other relevant authority

(3) In instances where the proposal is not recommended by any of the recommending authorities, the reasons will be forwarded to the County Government in writing within 30 days from receipt of the application.

(4) On receipt of recommendations, the application shall be forwarded to the Cabinet Secretary which if satisfied will give approval indicating terms and conditions to be met by the applicant.

(5) The approval or reasons for rejection shall be communicated to the applicant by the Cabinet Secretary in writing within 30 days of such a decision.

(6) Survey will be undertaken to produce a cadastral map/plan.

(7) the Chief Land Registrar will make an entry in the register and the original title

(8) The Cabinet Secretary, the County Governments and other State Agencies may impose regulatory conditions to development permission. Such conditions may include the valuation of the property for payment of annual rent and any other requisite fees.

Change/ extension of user  
(Leasehold)

**61.** (1) Application for change / extension of user shall be submitted to the office of the Commission. Upon receipt, the Commission shall forward the

application to the national government or relevant county government

(2) Upon receipt of the application, the national or county Government shall ascertain the viability of the application and may circulate the application to the relevant authorities including but not limited to—

- (a) The County Executive Committee member in charge of lands
- (b) Director of Surveys
- (c) Director of Physical Planning
- (d) The land administration officer of the national government ;
- (e) Land Control Board where applicable; and
- (f) Any other relevant authority

(3) the National or County Government shall forward the recommendations to the Commission for implementation within 30 days of receipt of the application

(4) On receipt of favorable recommendations, the Commission shall: -

- (i) Require survey to be undertaken to produce cadastral map/plan.
- (ii) Undertake valuation for revised land rent
- (iii) Prepare and execute a new lease with new conditions and forward it to the Chief Land Registrar for registration
- (iv) require the applicant to submit the existing certificate of lease to the Chief Land Registrar in exchange for a new one

Approval of building plans on private land

**62.** (1) Application for building plans on private land shall be submitted to the relevant County Government

(2) The County Government shall satisfy itself that the special conditions indicated in the title documents have been adhered to.

(3) If satisfied that development conditions have been complied with, the County Government shall forward the approved copy of the building plans to the Cabinet Secretary and the Commission for information. *Application for consents*

Application for consent to transfer, sublease or charge.

**63.** (1) Applications for consent to transfer, sublease or charge private land shall be submitted to the County Government or the Cabinet Secretary as the case may be on the prescribed Form LA no.....

- (2) An application under sub regulation (1) shall be accompanied by—
- (a) a rent clearance certificate;
  - (b) Proof of compliance with the special conditions on the lease.
- (3) The Cabinet Secretary may conduct a site inspection to confirm any matter in relation with the land.
- (4) The Cabinet Secretary shall—
- (a) Give the consent in the prescribed Form No.....;or
  - (b) Decline to give the consent and provide the applicant with reasons thereof.
- (5) Where an application to transfer foreign Government owned property is received, the Cabinet Secretary shall refer the application to the Attorney General for confirmation that the transaction is sanctioned and approved by the respective foreign Governments in accordance with their laws

## **PART VIII—COMPULSORY ACQUISITION OF INTERESTS IN LAND**

### *Procedure for compulsory acquisition of land*

Inspection and Collection of data

- 64.** (1) An application for compulsory land acquisition pursuant to section 107 (2) of the Act shall be made to the Commission in writing by the acquiring body
- (2) The Commission shall require the acquiring body to confirm in writing that it has sufficient funds for the intended acquisition.
- (3) The Commission shall further satisfy itself that the geo-referencing of the land to be acquired has been done.

Notification of the public of the proposed acquisition

- 65.** (1) Upon receipt of an application for compulsory acquisition, the Commission shall publish at least thirty days notice of intention to acquire the land in prescribed Form No..... in the gazette, in at least two daily newspapers with nationwide circulation, one local newspaper and affix notices at the County, Sub County and ward offices
- (3) The Commission in consultation with the affected persons shall inspect and collect data on—
- (a) the location;
  - (b) the area to be acquired ;

- (c) the proposed land use in the national or county spatial plans (d)
- (d) existing use of the land
- (e) improvements on the land being acquired ;
- (f) the impacts of the acquisition; and
- (g) any other information relevant for the acquisition

- Notification to the Registrar on the proposed acquisition
- 66.** (1) The Commission shall serve a copy of the notice in sub-regulation (1) on the Registrar who shall, on receipt of the notice, make an entry in the register of the intended acquisition.
- Notice of inquiry to be issued by Commission
- 67.** (1) The Commission shall issue a notice of inquiry in Form No .... to every person whose interest appears in the register and who claim to be interested in the land.
- (2) The notice of inquiry shall be published in the Kenya gazette, in at least two dailies with nationwide circulation, and county gazette and at the respective county, sub county and ward offices at least fifteen days before the date of the inquiry.
- Inquiry as to compensation.
- (1) At the expiry of the fifteen days mentioned in regulation 63, the Commission shall conduct an inquiry to hear and determine issues of propriety and claims for compensation by persons interested in the land as stipulated under section 112 of the Act.
- Valuation of claims and interests.
- 68.** The Commission shall carry out valuation of interests or claims determined at the inquiry for purposes of determining the full and just compensation to be payable to the persons whose interest or claims have been determined and inform the acquiring body of the costs.
- Factors to be considered in awarding compensation.
- In determining and assessing just compensation, the Commission shall be guided by the rules provided in the Third Schedule of these Regulations
- Service of award and payment of compensation
- 69.** (1) The Commission shall prepare an award which shall include the size of the land to be acquired, the value of the land and the amount of compensation payable to the persons with interest in the land.
- (2) This shall be served on each person with a determined interest in Form No ..... notifying the respective persons of the award and offer for compensation.

- (3) The bonafide person(s) shall be required to communicate their acceptance or rejection of the award in the prescribed form LA No.....
- (4) Where the award is accepted, the bonafide person(s) shall forward their bank details, PIN No. and identification documents to the Commission.
- (5) where the award is contested, the bonafide person(s) shall be required to register their objection with the Court in accordance to section 127 of the Act
- (6)The acquiring body shall deposit with the Commission the compensation funds in addition to survey fees, registration fees and any other incidental costs.
- (7) The Commission shall pay the compensation in accordance with the award to the persons entitled within ninety days from the date of receipt of funds from the acquiring body.
- (8) Upon payment of compensation, the land owner shall deliver the original title to the Chief Land Registrar in accordance with Section 121 of the Act.
- (9) The Commission shall take possession of the land on a specified date upon service of the notice in Form No ..... to all persons interested in the land.

Power to obtain temporary occupation of land

- 70.** (1)The Commission shall serve notice on every person interested or who claims to be interested in the land that is required by a public body for a period not exceeding five years.
- (2)Such notice shall be in the prescribed form LA No.....
- (3) upon giving the notice, the Commission shall cause the land to be valued for compensation within 7 days of the notice
- (4) upon payment of full compensation, the Commission shall take possession of the land by entering and posting a notice on the land in the prescribed Form LA.....that possession has been taken of the land and shall serve a copy of the notice to the occupier.
- (5) The Commission shall require the Chief Land Registrar to make an entry of the temporary acquisition in the register

Reference of matters to Court for determination by the Commission

- 71.** An application to the Court pursuant to section 127 of the Act shall be in the prescribed Form LA No.....

Acquisition of part of the land and survey

- 72.** (1) If only a portion of the property comprised has been acquired, a final survey of the acquired land shall be carried out within six months
- (2) The Registrar shall register the acquired parcel in favour of the acquiring authority and register the remaining parcel in the name of the proprietor, where applicable.
- (3) Where the parcel is deemed unfit for the purpose for which the acquisition was intended, the Commission shall notify the Registrar to remove the notice

of intention to acquire on the register within seven days from the date of the notice.

## PART IX—SETTLEMENT PROGRAMMES

### *Identification and vetting of proposed beneficiaries of settlement programmes*

Planning and survey of settlement scheme land.

**73.** Where the national and/or county government has identified public land for a settlement programme, they shall request the National Land Commission to reserve the land to the Board of Trustees for implementation of a settlement scheme as per Section 134 of the Act.

- (2) The Board of Trustees shall request the Director of Surveys to prepare a base map of the reserved land.
- (3) On receipt of the base map, the Board shall cause the land to be planned, surveyed and serviced.
- (4) The registrar shall open a register for each parcel of land in favour of the Board of Trustees before the land is further allocated to the beneficiaries. .

Procedure for establishment of the sub-county selection committee

**74.** The Cabinet Secretary shall appoint members of the sub-county selection committee from persons nominated as per section 134(4) of the Act

- (2) The Cabinet Secretary shall issue a notice requesting relevant organizations to nominate suitable persons to be members of the sub-county selection committee
- (3) The names of the nominees shall be received at the office of the relevant County Commissioner for submission to the Cabinet Secretary for appointment
- (4) The secretary to the Selection Committee shall be the representative of the Board of Trustees.
- (5) Members of the committee may be paid reasonable honoraria and allowances for their services as determined and approved by the Cabinet Secretary

Procedure for identification of beneficiaries

**75.** (1) The sub-county selection committee established under regulation 73 (1) shall identify the intended beneficiaries from among members of the targeted group(s)

- (2) Where it is necessary for the committee to invite application for land within a settlement scheme, the committee shall publish a notice of not less than thirty days in two newspapers with nationwide circulation and affix a copy of the notice at the headquarters of the respective county, sub county and ward offices and in conspicuous places at the site of the land in question. The notice shall be in the prescribed Form LA.....
- (3) The notice shall state -



- (a) the targeted group of persons;
- (b) the criteria for qualification for settlement in the program;
- (c) the dates for the receipt and closure of the applications;
- (d) Date and time for balloting
- (e) any other information that may be required.

(4) The application shall be in Form LA..... and shall state:-

- (a) the information which the committee would require from the applicant for purposes of vetting the applicant; and
- (b) any other information that may be required.

Vetting exercise by the Committee.

**76.** On receipt of the applications under sub-section 74(4) of the regulations, the Committee shall vet the applicants to ascertain their qualifications and in the case of-

(a) squatters, shall, among other things, ensure that the person-

- (i) is not in any gainful employment;
- (ii) does not own any land elsewhere; and
- (iii) is not a beneficiary of any other settlement programme; and

(b) displaced persons, shall ensure that the persons-

- (i) are the bona fide owners of the parcels of land from which they were displaced; and
- (ii) Were displaced as a result of natural causes, internal conflicts or other causes that may lead to the movement and displacement of persons and, as a result, cannot access their land.
- (iii) Who benefits from land of comparable value shall be required to surrender the title for the original land which will be vested in the national or county government, where applicable.
- (iv) Where title in (iii) above is not available , the Board shall request the land registrar to make an entry in the register indicating forfeiture of the land to the national or county government, where applicable

(c) poor and the landless, the Committee shall, ensure that the

beneficiaries-

- (i) have no own dwelling;
- (ii) have no means of livelihood;
- (iii) will undertake to live and work on the land;
- (iv) have not benefitted from any settlement programs; and
- (v) Shall adhere to the conditions of allocation.

Preparation of list of beneficiaries.

**77.** The Committee shall, after verification of the applicants, prepare a list of proposed allottees together with the minutes of the Committee which shall be forwarded to the Board of Trustees.

- (2) The Board may approve the list of beneficiaries or may send it back to the Committee for further verification and clarification if it is not satisfied with the process.

Determination of the cost of land.

**78.** If the Board approves the list of beneficiaries, it shall:

- (a) Determine the cost of land based on the purchase price, the administrative costs and other costs to be borne by the beneficiaries; or
- (b) Elect to charge a nominal fee to cover both the purchase price, the administrative costs and other costs from the beneficiaries.

- (2) Every parcel of land allocated under the settlement programme shall be held on freehold or leasehold basis as the Board may determine.

Allocation of land in settlement schemes

**79.** (1) On the date of the actual allocation of the land, the applicants shall:

- (a) draw ballots and the exercise shall be carried out in public in the presence of an officer from the Betting Control and Licensing Board; or
- (b) The Board of Trustees shall approve a list of beneficiaries contacted directly in a prior exercise of verification, for direct allocation

- (2) The Ballot papers to be used in the draw shall be in the Form LA..... and shall have the following particulars-

- (a) parcel number of the allocated land;
- (b) the names of the applicant (to be filled in after the draw);
- (c) the ID number of the applicant; and

(d) the signature of the Committee secretary.

Successful applicants to be shown allocated parcel of land.

**80.** The successful applicants shall be shown their respective parcels of land by the Committee.

(2) On completion of the exercise of balloting, the Committee secretary shall enter all the names of the beneficiaries into a register to be kept by the Registrar and a copy forwarded to the Board of Trustees for custody ,

Land Settlement Fund Board of Trustees to publish names of successful applicants.

**81.** The Board shall publish a list of the successful applicants and affix a copy of the list at the headquarters of the respective county, sub county and ward offices where the settlement scheme is located..

(2) The Board of Trustees shall issue letters of offer in Form LA.....indicating the name of the allottee , parcel number and the amount of money to be paid for the parcel and the settlement conditions to be fulfilled .

(3) On payment of the requisite fees, the Land Settlement Fund Board of Trustees and the beneficiaries shall execute the legal documents which include the offer document, the charge (where applicable) and an ancillary agreement.

(4) The Board shall prepare and forward the Charge to the Registrar in Form LA.....to be entered in the register and a certificate of title shall be prepared in favor of the beneficiaries for the purpose of registration.

(5) The Registrar shall enter a restriction in the register that the property is not transferable except by a process of succession/transmission as provided for under section 134(7) of the Act.

(67) Upon the full payment of all the moneys due, the Board shall execute a discharge of the charge in Form LA.....,which shall be forwarded to the Registrar for registration and removal of the original charge

Development and promotion of settlement programmes

**82.** The Board may, if circumstances so permit, provide funding from the Land Settlement Fund for-

(a) Development loans to beneficiaries on a need basis in Form LA.....;

(b) provision of basic infrastructure and services in settlement schemes; and

(c) any other purpose that would enhance development and promote settlement programmes

Settlement of squatters on occupied land.

- 83.** Pursuant to Section 135 of the Act, the Board may on its own motion or on request by the national or county government initiate the process of settlement of squatters on occupied land.
- (2) In order to resettle the squatters, the Board may-
    - (a) negotiate to purchase, or acquire private or community land; or
    - (b) request the Commission to reserve public land occupied by squatters.
  - (3) The Board must satisfy itself that-
    - (a) the occupied land is consistent with the conditions set in section 12(2) of the Act;
    - (b) the squatters are not beneficiaries of any settlement programme;
    - (c) Resettlement of such squatters shall not adversely affect the rights of any lawful contiguous land owner.
  - (4) The Board shall call for the planning and survey of the land and ensure that due diligence is taken to avoid unnecessary movement or relocation of the squatters from their dwellings.
  - (5) The Board shall direct the Committee to identify, vet and verify the bona fide squatters and compile a list.
  - (6) In the event that the available land is inadequate for all the squatters, the Board shall undertake to settle the remaining squatters in an alternative land where and when available
  - (7) On receipt of the list of the bona fide squatters, the Board shall value each parcel to determine the fee payable by the beneficiaries and issue letters of offer as provided for in sub-section .... of these regulations

*Operations of The Land Settlement Fund Board of Trustees*

Meetings and Minute Book.

- 84.** The quorum for meetings shall not be less than four Trustees of the Board.
- (2) The Board shall meet in intervals of three (3) calendar months provided that the chairperson or in his absence the Vice Chairperson may convene meetings of the Trustees as and when he considers the same necessary or desirable for the proper conduct of their business.
  - (3) Every meeting of the Board shall be convened by a written notice sent to the

Trustees at least 7 days before the meeting.

- (4) Decisions shall be made by consensus or by a majority vote in case of a split .
- (5) In case of a tie in the votes, the chairperson or the member acting as the chairperson shall have a casting vote in addition to his deliberative vote.
- (6) The Trustees shall keep a Minute Book and regulate its own procedure including the method for taking necessary votes.
- (7) The Minute Book shall contain records of minutes of all meetings, deliberations and resolutions of the Trustees.

Accounts.

- 85.** The Trustees shall keep proper books of account and shall prepare annual statements of accounts consisting of an income and expenditure account relating to a period of not more than 12 months and of a balance sheet relating to the end of such period.
- (2) The accounts of the Trust Fund shall be audited in accordance with the provisions of the Public Finance Management Act, 2012.
  - (3) Donor funds shall be accounted for separately in accordance with the Memorandum of Understanding (MoU).

Banking.

- 86.** The Trustees shall maintain such banking accounts for the Fund with banks as approved by the Cabinet Secretary for the time being responsible for National Treasury.
- (2) All Accounts and Investments shall be held for and on behalf of the Fund in the name of the Board of Trustees
  - (3) Monies paid by Donors in the form of grants shall be banked in accordance with the Memorandum of Understanding entered into by the parties.

Trustees' Interest in the Trust Fund.

- 87.** Trustees shall not take or hold any interest in any property belonging to the Trust Fund otherwise than as Trustees for the purposes of the Fund. Further, no Trustee shall receive remuneration or be interested in the supply of work or goods at the expense of the Fund.

(2) Provided nevertheless that-

- (a) Trustees may be paid reasonable honoraria and allowances for their services of an amount to be determined by the Cabinet Secretary and Salaries and Remuneration Commission.
- (b) A trustee may be reimbursed any reasonable and proper expenses incurred by him in carrying out his duties including traveling or any

other expenses incurred by him as a Trustee.

Trustees' Administrative Arrangements.

**88.** For the efficient conduct of the affairs of the Fund the Trustees shall-

- (1) Appoint, on such terms and conditions of service as appropriate, a public officer to be the officer responsible for administering the Fund who shall oversee, inter alia, the following functions-
  - (a) administer the offices of the Fund;
  - (b) appraise applications for financing of projects and programmes;
  - (c) prepare agreements with beneficiaries and other stakeholders;
  - (d) ensure disbursement of Funds;
  - (e) monitor the implementation of projects;
  - (f) carry out technical and financial audits of projects and programmes;
  - (g) facilitate the provision of technical and advisory support to, and sensitization of communities;
  - (h) give administrative and technical support to the Trustees;
  - (i) give advice to the Trustees and consider the suitability and appropriateness in the circumstances; and
  - (j) Provide supervisory role over technical and support staff in the settlement programmes.
- (2) Seek and procure such technical and administrative support may be necessary for the establishment and operation of the Fund.
- (3) Keep minutes of all meetings and the exercise of all powers and discretion vested in them and the passing of resolutions.
- (4) From time to time make arrangements to delegate any of the functions, powers or any business relating to the Fund to anyone or more of their members such as sub-committees.

Trustees' Indemnity.

**89.** In the execution of the Trust duties and powers of this Fund, the Trustees shall be indemnified against all debts, liabilities, claims, and damages incurred or made against them in their capacity as Trustees other than willful and individual fraud, wrongdoing or wrongful omission on the part of the Trustees or any one of them.

Amendment.

**90.** The Trustees may amend either by deletion, addition or otherwise any of the

provisions of this Fund and no amendment shall be made which shall make the Board to cease to be a Trust for the primary objective set out in the Land Act 2012.

## PART X—EASEMENTS AND ANOLOGOUS RIGHTS

### *Creation of Public Rights of Way*

Applications for creation of public rights of way to the Commission

**91.** (1) An application shall be made to the Commission by the respective applicant in the prescribed Form LA no.....to create way leaves under sections 143 and 144 of the Act

(2) An application shall be made to the Commission by the respective applicant in the prescribed Form LA no.....to create communal right of way under sections 143 and 145 of the Act

(3) The applicant shall supply a survey map from the Director of Surveys as well as any other relevant documents and drawings indicting the proposed right of way and any other information necessary to enable the Commission to process the application.

Notices by the Commission

**92.** (1) The Commission shall serve a notice in Form LA.....to all persons occupying the land over which the proposed public right of way or way leave is to be created.

(1) The Commission shall:

- a) visibly post the notice along the route of the proposed way leave or public right of way;
- b) make an announcement of the notice in both official and local languages in radio stations with nationwide coverage;
- c) Cause an inspection and valuation of the land on which the public right of way is proposed

Commission to forward recommendations to the Cabinet Secretary

**93.** After the expiry of 90 days, the Commission shall forward the recommendation for creation of the public right of way or way leave to the Cabinet Secretary, who shall create a public right of way or way leave by order in the Gazette in Form LA.....

Negotiations when there are objections

- 94.** (1) Where there are objections to the application, the Commission at the end of the ninety days notice may recommend to the Cabinet Secretary to initiate negotiations between the persons who made the objections or submissions and the applicants.
- (2) The Cabinet Secretary shall, within not less than two weeks, initiate negotiations between the persons who made the objections or submissions and the applicants

Public inquiry in case of objections

- 95.** (1) The Commission shall consider all the information received and make recommendations to the Cabinet Secretary to carry out a public inquiry.
- (2) The Cabinet Secretary shall constitute a public inquiry panel which shall consist of six members nominated by the following institutions:
- (a) Institution of Surveyors of Kenya, who shall be the chairperson ;
  - (b) Ministry of Lands and Physical Planning, who shall be the secretary
  - (c) The Law Society of Kenya;
  - (d) National Land Commission;
  - (e) The respective county government; and
  - (f) Kenya Institute of Planners.
- (3) The quorum shall be the Chairman and three other members.
- (4) The Cabinet Secretary shall meet all the expenses of the inquiry including the honoraria of the Members subject to the directions of the Salaries and Remuneration Commission.

Notice of Public Inquiry.

- 96.** (1) The Secretary of the Public Inquiry shall send a two weeks' notice in Form LA..... specifying the date, time and place of the inquiry to all parties to make objections, submissions or observations in relation to the proposed way leave or public right of way.
- (3) On receiving the submissions, objections or observations from the respective stakeholders, but before the expiry of the two weeks, the Inquiry may require a party to give additional information as may be necessary.
- (4) At the expiry of two weeks from the date of hearing, the Secretary to the Inquiry shall prepare and submit a report to the Commission which shall contain—



- (a) a description of the objections received;
- (b) a summary of issues arising out of any submissions and observations; and
- (c) Recommendation on whether the proposed way leaves or public right of way shall proceed, with or without modifications.

Compensation for Land and other interests on creation of way leave or public right of way

**97.** (1) Upon survey and valuation of the land acquired for creation of a public right of way, the Commission shall pay the respective compensation to the affected parties in accordance with Part IV of these Regulations.

(2) In the case of a creation of a way leave, a survey of the route shall be undertaken and valuation for compensation of affected land and development shall be carried out.

(3) The Commission shall obtain the compensation to be paid under Sub-regulation (1) from the respective Authority or Statutory body on whose behalf the way leave was created.

Order to create Public Right of Way

**98.** (1) Upon reaching a consensus, the Cabinet Secretary may by Order in Form LA ..... create a Public Right of Way pursuant to Section 146(4).

(2) In case of a public right of way, the land acquired shall vest in the national government or relevant county government as the case maybe.

Registration of the way leave or public right of way

**99.** The order for the public right of way or way leave shall be forwarded to the Land Registrar in the relevant County registry for noting in the register.

**PART XI: MISCELLANEOUS**

Eviction Notice to Unlawful Occupiers Of Public Land

**100.** (1) Upon establishing that a particular parcel(s) of public land is unlawfully occupied, the National Land Commission shall issue notice(s) to the unlawful occupiers of public land to vacate the land in Form LA.....

(2) The Commission shall publish a notice in the Gazette and in one newspaper with nationwide circulation in Form LA.....

Eviction Notice to Unlawful Occupiers of Unregistered Community Land

**101.** (1) Upon establishing that a particular parcel(s) of unregistered community land is unlawfully occupied, the County Executive Committee Member responsible for land matters shall issue notice(s) to the unlawful occupiers to

vacate the land in Form LA.....

(2)The County Executive Committee Member shall publish a notice in the Gazette and in one newspaper with nationwide circulation in Form LA.....

Eviction Notice to Unlawful Occupiers of Private Land

**102.** (1)Upon establishing that a particular parcel(s) of private land is unlawfully occupied, the owner(s) of such land shall issue notice(s) to the unlawful occupiers to vacate the land in Form LA.....

*Mandatory Procedures During Eviction*

Proper Identification of Persons Taking Part in The Eviction or Demolition

**103.** (1)Person(s) taking part in the evictions or demolitions shall be required to identify themselves as follows

- a) Show the original National Identification Cards ; or
- b) Official (staff) Identification Cards; or
- c) A letter of authorization from the owner(s); or
- d) A letter from the National Land Commission in case of Public Land

Formal authorizations for evictions

**104.** (1) Forman authorization for evictions shall be in writing from :

- a) The National Land Commission in the case of public land;
- b) The County Executive Committee Member responsible for land matters in the case of unregistered community land Government
- c) The owner(s) in the case of private land

(2) Such authorization shall be copied to the National Government Administrators in the counties and to the Officer Commanding the Police Division of the area.

Time during which Evictions should be undertaken

**105.** (1)Evictions shall be carried out between 6.00 am and 6.00pm

Protection of Property or Possessions

**106.** (1) The persons taking part in eviction shall allow the evictees to carry with them their personal property and possessions

(2) The persons taking part in eviction shall not destroy the property and possessions left behind involuntarily

**FIRST SCHEDULE**

**Sec. 10 (1)**

**GUIDELINES FOR MANAGEMENT OF PUBLIC LAND HELD BY PUBLIC AGENCIES, STATUTORY BODIES AND STATE CORPORATIONS**

1. All Public Agencies, Statutory Bodies and State Corporations shall maintain an inventory of all lands held by them and ensure that such lands are surveyed and titled
2. The Public Agencies, Statutory Bodies and State Corporations shall maintain the land for the purposes for which it was allocated
3. The institutions shall undertake to prepare long term land-use and management plans for the land and deposit the plans with the National Land Commission
4. The institutions shall be responsible for provision and maintenance of relevant infrastructure
5. The institutions shall ensure compliance to applicable statutory fees and charges including prompt payments of rates and rents
6. Where the land or part thereof forms part of an ecologically fragile ecosystem, due measures should be undertaken to conserve such land
7. Any proposed changes to the land use plans shall require approval from the National Land Commission
8. Any change of use of the whole or part of the land, from the registered use shall require public consultation and approval from the National Land Commission
9. Where part of the land held by the institutions may be required in the interest of defense, public security, public morality, public safety, public order, or public health the National Land Commission shall cause the Chief Land Registrar to make an entry of the temporary acquisition in the register.
10. The institutions shall undertake periodic valuation of their land
11. The institutions shall ensure that they comply with environmental management regulations as maybe prescribed by any other law.
12. Where the institutions are found to be in breach of any conditions in the land management plans, they shall undertake appropriate action as shall be required by the National Land Commission.

**SECOND SCHEDULE**

**Sec. 107 (2)**

**GUIDELINES AND CRITERIA TO BE FOLLOWED BY ACQUIRING AUTHORITIES IN ACQUISITION OF LAND**

1. The acquiring body shall clearly state the purpose for which the land is being compulsorily acquired for. This shall be accompanied by approved project designs.
2. Where the acquiring body is a county government, the application shall be accompanied by an approved County Spatial Plan.
3. The acquiring body shall confirm, in writing, to the National Land Commission, that there are sufficient funds for the acquisition process and the geo-referencing of the parcels to be acquired has been done.
4. The acquiring body shall be required to deposit funds for compensation, final survey and registration with the Commission.
5. The acquiring body shall take possession and secure the land upon payment of the compensation funds.

DRAFT

**THIRD SCHEDULE**

**Sec. 111(2)**

**RULES FOR THE ASSESSMENT OF JUST COMPENSATION**

1. In assessing compensation, the following factors shall be taken into account;-
  - a) The market value
  - b) 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 his or her other land;
  - c) 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 the acquisition injuriously affecting his or her other property, whether moveable or immovable, in any other manner or his or her actual earnings; in
  - d) Consequence of the acquisition, any of the persons interested is or will be compelled to change his or her residence or place of business reasonable expenses incidental to the change; and
  - e) 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 position of the land.
2. The Market value of the land to be acquired shall be the basis of the award. For the purposes of these regulations, "market value" in relation to land means the value of the land at the date of publication in the Gazette of the notice of intention to acquire the land and in assessing the market value :
  - a. The effect of any express or implied condition of title or law which restricts the use to which the land concerned maybe put, shall be taken into consideration;
  - b. If the market value of the land has been increased, or is currently increased, in either of the following ways, the increase shall be disregarded –
    - i. An increase by reason of an improvement by the owner or his or her predecessor after the date of publication in the Gazette of the notice of intention to acquire the land;
    - ii. An increase by reason of the use of the land or premises in a manner which could be restrained by a court or is contrary to the law, or is detrimental to the health of the occupiers of the premises or to public health.

- 
3. In determining the amount of compensation to be awarded for land acquired under the Act, the following matters shall not be taken into consideration—
- (a) The degree of urgency which has led to acquisition;
  - (b) Any disinclination of the person interested to part with the land;
  - (c) Damage sustained by the person interested which ,if caused by a private person , would not be a good cause of action;
  - (d) 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 use to which the land will be put;
  - (e) Any increase in the actual value of the land as at the date of publication in the Gazette of the notice of intention to acquire likely to accrue from the use to which the land will be put when acquired ; and
  - (f) Any outlay on additions or improvement to the land, incurred after the date of publication in the Gazette of the notice of intention to acquire land, unless the additions or improvements were necessary for the maintenance of any building in proper state of repair.
4. There shall be added a sum equal to fifteen per cent of the market value to the amount of compensation as compensation for disturbance.

**FOURTH SCHEDULE**

**FORMS**

DRAFT

*Dated.....2017*

*Cabinet Secretary*