

THE NATIONAL LAND COMMISSION BILL, 2011

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DRAFT

THE DRAFT NATIONAL LAND COMMISSION BILL, 2011

A Bill for

AN ACT of Parliament to provide for the functions, powers, qualifications of, and appointment procedure for members of the National Land Commission established by Article 67 of the Constitution and for connected purposes.

ENACTED by the Parliament of Kenya as follows—

PART I-PRELIMINARY

Short title and commencement.

1. This Act may be cited as the National Land Commission Act, 2011.

Interpretation.

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

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to lands;

“Chairperson” means the Chairperson of the Commission appointed under section 7 of this Act and includes the Vice-Chairperson when performing the functions of the chairperson;

“community land” has the meaning assigned thereto in the Constitution,

“Commission” means the National Land Commission established by Article 67 of the Constitution;

“panel” means the panel convened under section 6;

“Principal Secretary” means the Principal Secretary in the Ministry for the time being responsible for matters relating to lands;

“private land” has the meaning assigned to it in the Constitution;

“public land” has the meaning assigned to it in the Constitution;

“Secretary” means the Secretary of the Commission appointed under Article 250 (12) of the Constitution and includes a member of staff of the Commission when discharging the

functions of the Secretary;

Standard of service by
the Commission.

3. In the exercise of the powers and the performance of its functions the Commission shall:-

- (a) be bound in its respective activities by the provisions of the Constitution;
- (b) demonstrate commitment, technical, infrastructural and administrative competence in carrying out its mandate;
- (c) adopt the principle of quality service and formulate relevant scheme of training for all categories of staff to uphold that principle;
- (d) be non-partisan and non-political in orientation and operations;
- (e) adhere to any performance targets that the Commission may set from time to time in the discharge of its mandate; and
- (f) apply and promote such other positive values as the Commission may, by regulations, prescribe.

Guiding principles.

4. In the exercise of the powers or the performance of its functions the Commission, the Commission shall be guided by the following principles—

- (a) equitable access to land;
- (b) security of land rights;
- (c) sustainable and productive management of land resources;
- (d) transparent and cost effective administration of land;
- (e) integrity, authenticity and safe custody of land records;
- (f) sound conservation and protection of ecologically sensitive areas;
- (g) elimination of gender discrimination in law, customs and practices;
- (h) encouragement of communities to settle land disputes through recognised local community initiatives consistent with the Constitution;
- (i) public participation and accountability in land administration and management; and

- (j) access to land information.

PART II—ADMINISTRATION OF THE COMMISSION

Composition and qualifications of the members of, the Commission.

5 (1) The Commission shall comprise—

- (a) the Chairperson appointed in accordance with section 7 of this Act;
- (b) six members appointed in accordance with section 8 of this Act; and
- (c) one woman and one man to represent the public, qualified under subsection 2, appointed by the President with the approval of the National Assembly.

(2) To qualify for appointment of the member of the Commission a person shall be qualified in, and shall have had a distinguished career, and possess a university degree and at least ten years working experience, in any of the following fields—

- (a) land economics or real estate economics;
- (b) land survey or geospatial science;
- (c) land law;
- (d) environmental management or natural resources management;
- (e) agriculture or animal husbandry;
- (f) physical planning;
- (g) land administration and management;
- (h) gender and human rights; or
- (i) infrastructure development.

(3) To qualify for appointment of the Chairperson a person shall possess a university degree in any of the fields mentioned in subsection 2 and shall have had a distinguished career and at least fifteen years working experience.

(4) A person shall not be appointed as chairperson, member or Secretary of the Commission unless that person:-

- (a) is of irreproachable integrity and moral standing;
- (b) is not a beneficiary of an unlawful or unprocedural allocation of public land; and
- (c) has not been convicted of an offence involving fraud, dishonesty and abuse of office.

Interview and short-listing panel.

6 (1) There shall be an interview and short-listing panel which shall comprise the persons set out in subsection (2).

(2) The panel referred to in subsection (1) shall comprise—

- (a) the Chairperson of the Public Service Commission who shall be the Chairperson;
- (b) the Principal Secretary in the Ministry responsible for matters relating to lands, or his or her representative appointed in writing;
- (c) the Attorney-General, or his or her representative appointed in writing;
- (d) a representative nominated by an organization or association of professional societies, appointed by the Cabinet Secretary;
- (e) a representative nominated by an organization or association dealing with the rights of women, appointed by the Cabinet Secretary; and
- (f) a representative nominated by a forum of organisation or organizations working for public benefit on land matters , appointed by the Cabinet Secretary.

(3) The panel shall be responsible for the identification and recommendation for appointment of the Chairperson and the commissioners.

(4) Without prejudice to the generality of subsection (3), the panel shall be responsible for announcement of the vacancies in the offices of the members of the Commission, the short-listing of applicants and interviewing the applicants for onward transmission to the National Assembly.

(5) The Public Service Commission shall provide administrative services to the

Panel.

First appointment of
chairperson of the
Commission.

7 (1) The panel shall within fourteen days of the coming into force of this Act, in the Gazette and in at least two newspapers with national circulation:-

(a) notify the public of the vacancy in the office of the chairperson of the Commission;

(b) invite applications to be submitted by qualified persons within such number of days as shall be specified in the notice, to fill the vacancy in the office of the chairperson.

(2) Within fourteen days of the expiry of the deadline for the submission of applications referred to in subsection (1) (b), the Cabinet Secretary shall convene the panel for the purpose of short-listing and interviewing the candidates for the advertised position.

(3) The panel shall in accordance with the results of the interview, list out the applicants in the order of merit, taking into consideration gender and regional balance, and submit a list of the first three names to the National Assembly.

(4) The National Assembly shall consider the names and either approve or reject all or any name in the list.

(5) Where, under subsection (4), National Assembly has rejected a name in the list it shall ask the panel to submit a name in the list of those interviewed next following the first three names for its consideration.

(6) The National Assembly shall within seven days of receipt of the names from the panel submit the approved names to the President who shall, within seven days, appoint and publish in the Gazette the name of the person appointed as chairperson of the Commission.

First appointment of the other members of the Commission.

8. (1) The panel shall within fourteen days of the coming into force of this Act, in the Gazette and in at least two newspapers with national circulation:-

- (a) notify the public of the vacancies in the offices of members of the Commission, and
- (b) invite applications to be submitted by qualified persons within such number of days as shall be specified in the notice, to fill the vacancy in the office a commissioner in the Commission.

(2) Within fourteen days of the expiry of the deadline for the submission of applications referred to in subsection (1) (b), the panel shall short-list and interview the candidates for the advertised positions.

(3) The panel shall in accordance with the results of the interview, list out the applicants in the order of merit, taking into consideration gender and regional balance, and submit a list of the first six names in the list to the National Assembly.

(4) The National Assembly shall consider the six names in the list and either approve or reject all or any name in the list.

(5) Where, under subsection (4), National Assembly has rejected any name in the list, it shall ask the panel to submit, in substitute thereof, a name next following the first six names, in the order of merit, for its consideration.

(6) The National Assembly shall within fourteen days of receipt of the names from the panel submit the approved names to the President who shall, within fourteen days, appoint and publish in the Gazette the names of the persons appointed as commissioners.

Filling of a vacancy in the Commission.

9 (1) The panel shall:-

- (a) at least three months before the expiry of the term of a member of the Commission;
- (b) within thirty days of there being a vacancy in the office of a member of the

Commission otherwise than by the expiration of a term of a member,
in the Gazette and in at least two newspapers with national circulation—

(i) notify the public of the vacancy or vacancies, as the case may be; and

(ii) invite applications to be submitted by qualified persons within such number of days as shall be specified in the notice, to fill the vacancy in the office a commissioner in the Commission.

(2) Within fourteen days of the expiry of the deadline for the submission of applications referred to in subsection (1) (b), the panel shall short-list and interview the candidates for the advertised position.

(3) The panel shall, in accordance with the results of the interview, list out the applicants in the order of merit and submit to the National Assembly a list of the first three names.

(4) The National Assembly shall consider the list and either reject or approve any or all the names in the list.

(5) If the National Assembly rejects any of the names received from the panel, the panel shall substitute the rejected name with a name next in the list, in the order of merit, of those interviewed.

(6) The National Assembly shall within seven days of the approval of the names from the panel, submit the approved names to the President who shall, within seven days, appoint and publish in the Gazette the name of the person appointed as commissioner.

Gender, Regional
balance, transparency;
public information on
the appointment
process.

10 (1) The President, the National Assembly, the panel and any other person or institution involved in the process of appointment under this Act shall ensure that the process is transparent and that the public is fully informed of any decision taken and the reason for that decision.

(2) Without prejudice to the generality of subsection (1), the names of all the applicants for the position of the chairperson or member of the Commission shall, prior to the consideration of the applications, be published in the Gazette and in at

least two newspapers with national circulation.

(3) The composition of the Commission shall reflect gender and regional balance.

(4) The Chairperson and the Vice-Chairperson shall not be of the same gender.

Full-time and part-time members.

11 (1) The Chairperson and Vice-Chairperson of the Commission shall serve on full time basis.

(2) All the other members of the Commission shall serve on a part-time basis.

Oath of office.

12 The chairperson and members of the Commission shall, before assuming office, take and subscribe to an oath of office or affirmation before the Chief Justice as prescribed in the Second Schedule.

Functions of the Commission.

13 In addition to the functions of the Commission set out in Article 67(2) of the Constitution, the Commission shall:-

- (a) advise the National Government and County Governments respectively in the discharge of their functions relating to management of land vested under the Constitution or any Act of Parliament;
- (b) advise the National Government and County Governments on the review of statutes, regulations, on the issues of any permits, licences and on other administrative matters relating to land;
- (c) advise the National Government and the County Governments on any matter relating to public land;
- (d) establish and maintain a register of all public land, private land and community land in Kenya and the transactions thereof;
- (e) advise the National Government, the County Governments and communities on means to realise the value of land in terms of economic productivity, equity, environmental sustainability and conservation;
- (f) promote and ensure the utilization of public land resources on a sustainable basis and promote orderly and planned development of public land resources;

- (g) provide technical services to the National Government and the County Governments on matters relating to the use of land;
- (h) provide technical support to the ministry responsible for matters relating to land in the preparation and implementation of a national land use policy and other land related policies;
- (i) carry out such activities, and undertake such projects, as may be necessary for the execution of its functions; and
- (j) perform such other functions as may be assigned to it by this Act or any other Act of Parliament.

Powers of the
Commission

14. (1) In addition to the powers of the Commission under Articles 252 and 253 of the Constitution, the Commission shall have the power to -

- (a) purchase or otherwise acquire, hold, charge and dispose of movable or immovable property;
- (b) borrow and lend money;
- (c) enter into contracts;
- (d) do or perform all such other things or acts necessary for the proper performance of its functions under the Constitution and this Act which may be lawfully done or performed by a body corporate.

(2) Without limiting the generality of subsection (1), the Commission shall have powers to:-

- (a) assess land use demands from different sectors of the economy and advise the government accordingly;
- (b) issue legal instruments authorising the use or other dealing in public land or interest thereon;
- (c) in accordance with the law, repossess public land that was acquired through unlawful or unprocedural means;
- (d) conduct periodic inspection to determine whether there has occurred

encroachment on public land and take action to remove those encroaching;

- (e) make regulations on land use planning, assessment of tax on land and premiums on immovable property in areas designated by law; and
- (f) shall have all powers necessary or incidental to the performance of its functions under the Constitution, this Act or any other Act of Parliament.

Delegation by the Commission.

15 Subject to the provisions of the Constitution or any other law, the Commission may hire such experts or consultants, or delegate such of its functions as are necessary for the day-to-day management of its functions to subcommittees or to the secretariat.

Structure of the Commission.

16 (1) There shall be such sections, departments or divisions of the Commission, and such categories and classifications of staff under the Commission as the Commission may, from time to time, determine.

(2) The units referred to in subsection (1) shall be set up with specific mandates.

(3) The Commission may, from time to time:-

- (a) allocate functions to any such units; and
- (b) make such arrangements as may appear to the Commission to be expedient in connection with the division, amalgamation or abolition of any such units.

(4) Nothing in this section shall be construed as precluding the Commission from constituting such Committees or Panels for the effective discharge of its mandate.

Secretariat and Staff

17 (1) There shall be a secretariat of the Commission which shall comprise:-

- (a) such officers and other staff as the Commission may appoint to assist it in the discharge of its functions under the Constitution and this Act; and
- (b) such public officers as may, upon the request of the Commission, be seconded to the Commission.

(2) A public officer who is seconded to the Commission under subsection (1), shall, during the secondment, be deemed to be an officer of the Commission and subject to its

direction and control.

Appointment of
Secretary and removal
from office

18 (1) There shall be a Secretary of the Commission appointed by the Commission through a competitive recruitment process.

(2) The Secretary shall be the Chief Executive Officer of the Commission and head of the Secretariat and shall be responsible to the Commission.

(3) The Secretary shall be appointed for one term of seven years on such terms and conditions of employment as the Commission may determine unless the office falls vacant earlier owing to any reasons specified in subsection 5.

(4) A person may be appointed Secretary if that person has experience and qualifications mentioned in section 5(2) of this Act.

(5) The Commission may remove the Secretary from office only for :-

- (a) inability to perform the functions of his office arising out of physical or mental incapacity;
- (b) misbehaviour or misconduct; or
- (c) incompetence.

(6) Before the Secretary is removed from office under subsection 5 she or he shall be informed of the case against her or him and shall be given an opportunity to defend himself against any allegations.

Functions of the
Secretary

19 (1) The Secretary to the Commission shall, in relation to the proceedings before the Commission, act in accordance with the provisions of the Constitution, this Act and any other written law and shall, in particular, be responsible for:-

- (a) the acceptance, transmission, service and custody of documents in accordance with this Act;
- (b) the enforcement of decisions of the Commission;
- (c) certifying that any order, direction or decision is an order, direction or decision of the Commission, the Chairperson or a member, as the case may be;

(d) causing to be kept records of the proceedings and minutes of the meetings of the Commission and such other records as the Commission may direct; and

(e) undertaking any duties assigned by the Commission.

(2) With the authorization of the Commission, the Secretary may consider and dispose of procedural or administrative matters in accordance with this Act.

(3) Any administrative function of the Secretary under this Act may in the Secretary's absence, be performed by any member of staff of the Commission whom the Chairperson may authorize for that purpose.

Commission to
establish county
offices, etc.

20 (1) The headquarters of the Commission shall be in Nairobi.

(2) The Commission shall, for purposes of ensuring access to its services in all parts of the country, establish such offices or registries in the counties, and may establish such offices or registries in such other locations as it may deem necessary.

(3) Subject to the First Schedule, the Commission shall regulate its own procedure.

Investigation of land
injustices.

21 (1) The Cabinet Secretary, on the recommendation of the Commission, shall within one year of its appointment, make rules for the conduct of investigations into historical land injustices as provided for in Article 67(2)(e) of the Constitution.

(2) The rules made under subsection (1) shall, among other things, provide for the right of any person to lodge a complaint with the Commission.

(3) The Commission shall make its recommendations for appropriate action and such recommendation shall include:-

(a) recommendation to Parliament and the President regarding the enactment of any necessary legislation;

(b) the taking of any necessary legal proceedings either by the Commission itself or other public authority; or

(c) the settlement of any particular dispute through alternative forms of

dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution; or

(d) the award of compensation to such victim as the Commission may deem just, taking into account, among other things, the economic circumstances of the victim and the financial sustainability of any type of compensation.

(4) A recommendation by the Commission under subsection (3) (d) shall be directed to the appropriate public authority and such public authority shall act in accordance with that recommendation.

(5) The Commission may, for purposes of expediting investigations and redress in respect of present and historical land injustices contemplated in Article 67(2) (e) of the Constitution, establish special committees comprising members of the Commission to assist the Commission in the discharge of that function.

(6) A committee established by the Commission under subsection (5) may include any such persons as the Commission may consider necessary for purposes of enabling the Commission reach a just and informed decision in any particular case, but such persons shall not vote on any matter before any committee.

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PART 111: FINANCIAL PROVISIONS

Funds of the
Commission

22 The Funds of the Commission shall comprise—

- (a) monies appropriated by Parliament for the purposes of the Commission;
- (b) monies accruing to the Commission in the course of the discharge of its functions or exercise of its powers; or
- (c) monies that the commission may obtain from any lawful source by way of donations, gifts or grants.

Statement of accounts.

23 (1) The Commission shall keep proper records in respect of all its activities, funds and property.

(2) As soon as possible after the end of each financial year, the Commission shall

prepare and submit to the Auditor-General a statement of accounts in respect of that financial year or in respect of such other period as the Auditor-General may direct.

Financial year.

24 The financial year of the Commission shall be the period of twelve months ending on the thirtieth June in each year.

Annual estimates.

25 (1) At least three months before the commencement of each financial year, the Secretary shall cause to be prepared estimates of the revenue and expenditure of the Commission for that year.

(2) The annual estimates shall make provision for all estimated expenditure of the Commission for the financial year and in particular, the estimates shall provide for:-

- (a) the payment of the salaries, allowances and other charges in respect of the staff of the Commission;
- (b) the payment of pensions, gratuities and other charges in respect of the staff of the Commission;
- (c) the proper maintenance of the buildings and grounds of the Commission;
- (d) the maintenance, repair and replacement of the equipment and other property of the Commission; and
- (e) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Commission may consider appropriate.

Account and audit

26 (1) The Secretary shall cause to be kept all proper books, and records of accounts of the income, expenditure and assets of the Commission.

(2) Within a period of four months from the end of each financial year, the Commission shall submit to the Auditor-General the accounts of the Commission together with:-

- (a) a statement of the income and expenditure of the Commission during that year; and

(b) a balance sheet of the Commission on the last day of that year.

(3) The accounts of the Commission shall be audited and reported on by the Auditor-General.

Annual Report

27 (1) The Commission shall cause an annual report to be prepared for each financial year.

(2) The Commission shall cause the annual report to be published in the Gazette and shall send a copy of the report to the President and to Parliament.

(3) The annual report shall contain, in respect of the year to which it relates: -

(a) the financial statements of the Commission; and

(b) description of the activities of the Commission.

(4) Without limiting what may be included in the annual report, the annual report shall include:-

(a) status of the investigations into historical land injustices and recommendations made;

(b) the recovery of public land that was unprocedurally or illegally allocated;

(c) the allocation, administration and management of public of land;

(d) administration and management of leasehold interests; and

(e) any other information relating to its functions that the Commission considers necessary.

(5) The Commission shall publish the report in at least two newspapers with national circulation.

PART IV—MISCELLANEOUS & TRANSITIONAL PROVISIONS

Offences

28 (1) Any person who:-

(a) in connection with an application by the person or by any other person for employment, appointment or promotion by the Commission, or in connection

with any matter on which it is the duty of the Commission to inquire, wilfully gives to the Commission or to any member of the Commission any information which is false or misleading in any material particular; or

- (b) without the consent, in writing, of the Chairperson, publishes or discloses to any unauthorized person or otherwise than in the course of duty, the contents or any part of the contents of any document, communication or information that is privileged and which has come to their knowledge in the course of their duties under this Act, and any person who knowingly acts in contravention of this section; or
- (c) otherwise than in the course of duty, directly or indirectly by themselves or by any other person in any manner influences or attempts to influence any decision of the Commission or of any member thereof; or
- (d) disobeys any order made by the Commission or a committee for attendance or for production of papers, books, documents or records,

commits an offence and is liable on conviction to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both.

(2) Notwithstanding the provisions of subsection (1) (c) of this section, nothing shall prohibit any person from supplying any information or assistance upon formal request made by the Commission.

Protection from
personal liability

29 (1) An employee or any person acting or discharging duties or functions of the Commission shall not be liable to any civil action or other proceedings for damages on account, or in respect, of any act committed or omitted to be done in good faith and in the course of employment.

(2) This section and Article 250(8) of the Constitution shall not relieve the Commission from any liability to any person for any wrongful act or omission of the Commission.

Consultation with the
Prime Minister with
respect to
appointments.

30. If this Act come into force before the general elections as contemplated in section 19(1) of the Sixth Schedule of the Constitution:-

- (a) the appointments to, or initiation of the removal process from, the Commission

shall be made by the President after consultation with the Prime Minister, as required by section 29 of the Sixth Schedule of the Constitution;

(b) the panel shall, in addition to the persons mentioned as members of that panel, include a representative from the Office of the Prime Minister.

Transitional powers of the Minister and Permanent Secretary

31(1) If this Act comes into force before the first general elections as contemplated under section 9 (1) of the Sixth Schedule of the Constitution the Minister for the time being responsible for matters relating to lands shall perform the duties assigned by this Act to the Cabinet Secretary.

(2) If this Act comes into force before the first general elections as contemplated under section 9 (1) of the Sixth Schedule of the Constitution the Permanent Secretary for the time being responsible for matters relating to lands shall perform the duties assigned by this Act to the Principal Secretary.

Duty to ensure smooth transition

32. The Cabinet Secretary shall, in consultation with the Commission, formulate and implement administrative measures to ensure smooth and orderly transition to the legal regime established by the Constitution and this Act.

Miscellaneous transitional provisions.

33. The Third Schedule of this Act applies.

FIRST SCHEDULE (s. 20)

PROVISIONS ON THE CONDUCT OF THE BUSINESS AND AFFAIRS OF THE COMMISSION

Meetings

- (1) The Commission shall have such number of meetings as it shall deem fit for the effective discharge of its mandate.
- (2) Notwithstanding subparagraph (1), the Chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the Commission at any time for the transaction of the business of the Commission.
- (3) The quorum for the conduct of the business of the Commission shall be one half of the members including the Chairperson.
- (4) The Chairperson shall preside at every meeting of the Commission at which he or she is present.
- (5) Unless a unanimous decision is reached, a decision on any matter before the Commission shall be by a majority of the votes of the members present and voting and in the case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.
- (6) Subject to such subparagraph (4), no proceedings of the Commission shall be invalid by reason only of a vacancy among the members thereof.

Committees

- (1) The Commission may establish such committees as it may consider appropriate to perform such functions and responsibilities as it may determine.
- (2) The Commission shall appoint the Chairperson of a committee established under subparagraph (1) from amongst its own members.

Disclosure of interest

- (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Commission and is present at a meeting of the Commission at which the contract, proposed contract or other matter is the subject of consideration, he or she shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.
- (2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.
- (3) A member of the Commission who contravenes subparagraph (1) commits an offence and is liable to a fine of one million shillings, or to imprisonment for a term of six months, or to both.

The common seal

- (1) The affixing of the common seal of the Commission shall be authenticated by the signature of the Chairperson and the Secretary and any document not required by law to be made under seal and all decisions of the Commission may be authenticated by the signatures of the chairperson and the secretary.
- (2) Provided that the Commission shall, in the absence of either the Chairperson or the Secretary in any particular matter, nominate one member to authenticate the seal on behalf of either the chairperson or the secretary.

Contracts and instruments

Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Commission by any person generally or specially authorized by the Commission for that purpose.

SECOND SCHEDULE (s.12)

OATH/SOLEMN AFFIRMATION OF OFFICE OF CHAIRPERSON/MEMBER OF MEMBER OF COMMISSION

I -----

having been appointed chairperson/member of the National Land Commission do solemnly swear/declare and affirm that I will faithfully and fully, impartially and to the best of my ability, discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice. (SO HELP ME GOD).

THIRD SCHEDULE (s. 33)

MISCELLANEOUS TRANSITIONAL PROVISIONS

1. This Schedule applies on the coming into effect of this Act, or on the commencement of work by the Commission, respectively, as the context may require.
2. Where, by the operations of the provisions of this Act, any function formerly performed by the Ministry of Lands is to be performed by the Commission, the Commission may retain the services of persons employed in the Ministry of Lands and performing such functions and being persons with such skills as may be necessary to enable the Commission discharge its functions without undue interruption.
3. Pursuant, to paragraph (2), the Commission shall establish such vetting procedure and requirements for the persons employed in the Ministry of Lands for the purposes of engaging the services of such persons.
4. Where necessary for the performance of the functions of the Commission, the Ministry of Lands shall transfer such facilities and assets owned by it to the Commission as may be necessary to enable the Commission discharge its functions without undue interruption in the delivery of services and generally perform its functions.

5. Any function that was formerly performed by the Ministry of Lands before this Act came into operation, and which functions, by virtue of this Act, fall to be performed by the Commission shall be deemed to have been performed by the Commission notwithstanding that the functions were performed by the Ministry.

6. Any action or suit instituted or being defended by the Government shall be continued or defended, as the case may be, by the Commission as if that action or suit was instituted by, or against, the Commission.

7. The salaries and allowances payable to, and other terms and conditions of service of the Chairperson and the members of the Commission, and allowances payable to members of the panel shall, pending the establishment of the Salaries and Remuneration Commission, be determined by the Public Service Commission in consultation with the Treasury.

DRAFT

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to, among other things—

- (a) provide for the operationalisation of the National Land Commission established by Article 67 of the Constitution,
- (b) to provide further functions of the Commission as, and to the extent, permitted by the Constitution,
- (c) to make provision for the procedure and manner of identification and recommendation for appointment of the members of the Commission and for connected purposes;
- (d) make provision for transitional matters when the Act comes into effect or the Commission becomes operational.

In order to comply with the constitutional timeframe on the enactment of legislation relating to the implementation of the provisions of Chapter Five of the Constitution - Land and Environment- it is imperative that the National Land Commission be established urgently so that the other processes necessary to implement the chapter would be carried out more conveniently and effectively.

The Bill seeks to provide for the manner of identification and nomination of persons to be appointed to the Commission. In this respect it is proposed that the panel to peruse the applications and identify the applicants for onward transmission to the President be composed of persons from both the Government and the relevant stakeholder groups. This would not only ensure compliance with the constitutional requirement of involving the people in decision making but also facilitate transparency in the process. The panel would be required to indicate in their report the relative strengths of the applicants in the report submitted to the Parliament.

It is proposed to have the appointments done in such manner as to enable representation on the Commission different professional categories. Land management requires a multidisciplinary team and the Bill proposes the appointment to the Commission of different professional categories for purposes of effective delivery on its mandate.

The Bill proposes further functions assigned to the Commission as allowed by Article 252 (1) (d) of the Constitution. These include the function of advising the other entities,

namely, the county governments and communities on matters relating to management of land in Kenya.

In accordance with the Sessional Paper on Land (Sessional Paper No. 3 of 2009 on National Land Policy), other functions of the Land Commission include some functions now carried out by the Ministry of Lands/Commissioner for Lands. These are proposed to be included as functions of the Commission.

It is expected that further functions of the Commission will emerge in the legislation containing substantive provisions on land, especially on public land. That legislation is being prepared and aims to consolidate and harmonise legislation relating land in Kenya.

The enactment of this Bill shall occasion expenditure of public funds to be provided for through the estimates.

Dated 2011.

James Aggrey Orengo

Minister for Lands

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