



NATIONAL LAND COMMISSION INVESTIGATION AND INQUIRY PRACTITIONERS GUIDE

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FOREWORD

The guide is written in the context of emerging technological, legal, political, social and economical national, regional and global issues. The aim of Kenya Vision 2030 is to create “a globally competitive and prosperous country with a high quality of life by 2030.” It aims to transform Kenya into a newly industrialised, middle income country that provides high quality life to all its citizens in a clean and secure environment. Poorly investigated or uninvestigated land complaints cost Kenyans and its government huge direct and indirect losses. The losses include expensive litigation, losses in litigation, public land losses, environmental degradation, adverse conflicts and related socio-economic adverse impacts. The guide supports effective neutral evaluation of site findings, land records, technical documents and witness evidence to ensure success in court and out of court settlement processes. Consequently, the guide is an enabler for sustainable health, security and development.



NLC enhanced capacity in exercising its constitutional and legislative investigation and inquiry mandates will enable NLC lawyers in development of quality evidentiary affidavits to contribute to informed and effective judgments. ELC judges can be guided by the NLC investigation, inquisitorial and research outcomes as NLC is enjoined as a public land manager and administrator. Additionally, NLC is usually enjoined in court or ordered by the courts to facilitate investigation and inquiry processes and to report back to the court. The guide will support the efficient execution of the related court orders.

The guide will support emerging linked processes such as NLC online dispute resolution automation that can be integrated in its *Haki kwa Ground* platform. The support of efficient collection

and analysis of data can highlight gaps and possible solutions in existing land and natural resources' administration and management legal frameworks. The guide's linkages to other emerging land dispute processes will accelerate sustainable land dispute resolution. The guide will support collection and analysis of data to inform decisions on emerging, conflicting and complex public interest issues in environment, development, inclusivity and settlement especially in the face of the ongoing AfCFTA and climate change discussions.

Gershon Otachi.

Chairman,
National Land Commission

PREFACE



Section 5 (b) of the Fourth Schedule of the NLC Act provides that NLC shall determine rules of procedure for the conduct of its business. In accordance to Section 16 of the NLC Act, NLC may work through its Committees. Through plenary resolutions, the NLC Legal Affairs and Dispute Resolution Committee (LADR)

and the Historical Land Injustice Secretariat have been tasked to conduct investigations, hold inquiries and make recommendations to appropriate authorities. Further, LADR Committee is tasked to develop and exercise oversight on the implementation of case investigation, litigation and out of court settlement framework policy. This Guide has been developed to provide the rules of procedure for the conduct of NLC's investigation and inquiry constitutional and legislative mandates.

Currently NLC has registered 9,823 present land injustice claims and the window for receiving present land injustice complaints is not closed. NLC has admitted 1037 historical land injustice claims. The claims raise complex issues that require the analysis of the present and repealed legal frameworks to be processed effectively and efficiently. Towards that end, NLC Commissioners and their technical support team require an in house operational practitioners' guide on applicable law and effective procedure to gather and process evidence to support court processes, out of court settlements and facilitation of reports as ordered by the court. This guide was developed to address that need.

The guide anchors the role and linkages of various internal and external actors during the conduct of due diligence to establish

factual substantive and procedural elements to resolve land disputes. The disputes arise during NLC management and administration of land on behalf of the County and National governments. The guide provides complaint processing that also informs NLC's research as well as planning and registration oversight mandates. The guide will inform the NLC investigation and inquiry processing and decision making procedures for sustainable recommendations to appropriate authorities for redress.

This Practitioners' guide, supports NLC role in securing the observance by all state organs of the land holding, use and management principles pursuant to Articles 249 of COK as read with Article 60 of COK and Section 6 (2) (c) of the NLC Act. Community initiatives of resolving disputes are recognized as a key land policy principle. Article 189 (2), COK recognizes the need of governments and their stage organs' cooperation in working together. In particular, government at each level and different governments at the county level, shall co-operate in the performance of functions and exercise of powers and, for that purpose, may set up joint committees and joint authorities. The guide identifies key stakeholders and their linkages with NLC in realizing the sustainable, efficient, effective and productive land holding, use and management envisaged in the constitution.

Gertrude Nguku

Vice Chair - National Land Commission

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Kabale Tache Arero

CEO, National Land Commission

CHAPTER ONE:

INTRODUCTION

1.1 Purpose of the Guide

These Guide is a practical advisory handbook to be used by the Commissioners and technical staff responsible for the conduct and support of investigations and inquiries. They shall use it to resolve land disputes and conflicts and determine rights and interests in land.

The guide includes objectives, methods and procedures to support structures that effectively detect the underlying causes of the dispute, gather evidence and produce investigation reports. The reports shall support litigation, prosecution, inquiries, policy direction and any other appropriate responses.

The Guide also identifies the roles and responsibilities of diverse internal and external actors and the interface of their roles for effective investigation and inquiries.

The purpose of the guide is anchored on Section 5 (b) of the Fourth Schedule of the NLC Act which provides that NLC shall determine rules of procedure for the conduct of its business.

1.2 Investigation and Inquiry Mandate of the NLC

NLC is established under Article 67 of the COK.

Article 67(2) (e) of the COK mandates NLC to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress.

Article 67(2) (f) of the COK mandates the NLC to encourage the application of traditional dispute resolution mechanisms in land conflicts.

Article 252(1) (a) (b) of the COK mandates the NLC to conduct investigations on its own initiative or on a complaint made by a member of the public. Also, the Commission has the powers necessary for conciliation, mediation and negotiation, and may perform any functions and exercise any powers prescribed by legislation, in addition to the functions and powers conferred by the Constitution.

Article 252(2) of the COK provides that a complaint to a commission or the holder of an independent office may be made by any person entitled to institute court proceedings under Article 22 (1).

Article 60(1) (g) of the COK mandates the NLC to encourage communities to settle land disputes through recognized local community initiatives consistent with the Constitution.

Further, Section 6(2) (a) of the National Land Commission Act, 2012 elaborates the powers of the Commission in conducting its functions including powers to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices and recommend appropriate redress. In doing this NLC shall have powers to: gather, by such means as it considers appropriate, any relevant information including requisition of reports, records, documents or any information from any source, including any State organ, and to compel the production of such information where it considers necessary.

Section 6(2) (b) of National Land Commission Act, 2012, gives NLC powers to hold inquiries. The Commission may receive written or oral statements and is not bound by the strict rules of evidence.

Under Section 6(2) (c) of the National Land Commission Act, 2012, NLC has powers to take any measures it considers necessary to ensure compliance with the principles of land policy set out in Article 60 (1) of the COK.

Pursuant to Section 15(1) of the National Land Commission Act, 2012, as read with Article 67(3) of the COK, the NLC shall receive, admit and investigate all historical land injustice complaints and recommend appropriate redress

1.3 Objectives of the Investigations and Inquiry

Investigation in land management involves neutral evaluation of the technical planning, survey, allocation, leasing, titling, acquisition, vesting and use of land. The evaluation is done in the context of the applicable law, policy and administrative practices to prepare an investigation report. The neutral evaluation of site findings, land records, technical documents and witness evidence support court and out of court settlement processes.

The investigation report is the midpoint outcome between the complaint intake and the selection of the binding adjudication process. It helps the NLC to map out the best resolution process, the parties involved and their roles. This report is informed by the existing records, witness statements, site visits, information received from claimants and stakeholders.

This investigation and inquiry guide includes the structures for processes of complaint receipt, processing and deciding on recommendations. The guide will assist in the realization of the following specific objectives:

1. To establish NLC's position on a contested land issue in the course of their land administration and public land management mandate. The established position will inform the action, advice and recommendation related to the issue resolution.
2. To assess and determine the Commission's position to support defence or institute suit during court proceedings where matters of allocation, acquisition and environmental management or injustice are in issue.

3. To establish present or historical land injustice at its own initiative or on a complaint and recommend appropriate redress.
4. To establish interests and rights in land and document conclusive evidence of the rights, interests, acreage and valuation during acquisition, relocation and compensation processes.
5. To encourage and adopt the decisions of community initiatives in line with the constitutional principles of land governance.
6. To recommend best processes of sustainable, efficient, effective and equitable land holding, management and use in line with the national land policy and the Constitution.
7. To recommend policy, address regulatory gaps and advise on land registration and planning.

1.4 Definition of terms

“Alienation” means the sale or other disposal of the rights to land as defined in Land Act, 2012.

“Allocation” means the legal process of granting rights to public land as defined in Land Laws (Amendment) Act, 2016.

“Commission” means the National Land Commission as established under Article 67 of the Constitution.

“Complaint” means a grievance lodged with the Commission detailing a possible breach of the law and rules governing the mandate of the Commission.

“Complainant” means a person or a group of persons who have lodged a complaint to the Commission about possible breach of law and rules governing the mandate of the Commission.

“Conciliation” Conciliation is a process in which an outside party brings the parties in dispute together for discussion among themselves. The outside party does not take an active role in

resolving the dispute but may help with setting of the agenda, record-keeping and administration, and may act as a go-between when parties do not meet directly, or as a moderator during joint meetings.

“Due process” is a requirement that matters be resolved according to established rules and principles and that individuals be treated fairly. It includes both the right to a fair trial and the right to an effective remedy

“Facilitation” is similar to conciliation, being a less active form of mediation. Facilitators may act as moderators in large meetings, ensuring that everyone is able to speak and be heard. They are not expected to volunteer their own ideas or participate actively in moving the parties towards agreement. Facilitation can also be applied to guide an individual or organization or community through strategic processes such as problem solving, prioritizing and planning.

“Historical land injustice” means an historical land rights violation and is a grievance as envisaged under Section 15 (2) of the NLC Act;

“Inquiry” is a process of conducting thorough and impartial review of the issue at hand and producing a report or set of recommendations. This report or recommendations will help to address the problem or prevent similar issues from occurring in the future.

“Investigation” is a systematic and thorough process of gathering and analyzing evidence and information to uncover facts or details about a particular issue or problem. The purpose of an investigation is to determine and/or establish the truth or accuracy of a situation.

“Investigation report” is the final panel report containing the complaint, complainant, NLC jurisdiction, content of the investigative processes, collected evidence, all parties’ factual findings, legal analysis and the panel recommendations

“Illegal allocation” of land is allocation of land that is not available for allocation. It is of no legal effect and any title issued in such cases is null and void.

“Irregular allocation” in relation to dealings in land means in a manner that does not conform to standards, procedures or the criteria prescribed under any written law.

“Jurisdiction” is the right, power or authority to adjudicate a case and make decisions.

Land administration: means the process of determining, recording, updating and disseminating information about the ownership, value and use of land and its associated resources

Land management refers to the establishment of goals and mechanisms to influence land use and development to achieve the land policy objectives envisaged under Article 60 of COK

Land tenure refers to the terms and conditions under which rights to land and land-based resources are acquired, retained, used, disposed of, or transmitted as envisaged under the National Land Policy, 2009.

“Mediation” means a process where the **parties to a dispute meet together and separately in confidence** with a mutually selected independent and neutral outside party to explore and decide how the conflict between them is to be resolved. **The mediator assists the parties in reaching an agreement but has no power to impose a result upon them.**

“Negotiation” is a process in which parties to a dispute or their representatives are invited to meet to reach a mutually acceptable rules governing an amicable resolution. Each party represents its own interests

“Neutral Evaluation” is an advisory process through which a Commission member or panel, the panel’s authorized Commission officer or expert assists the parties to resolve the dispute by providing a non-binding opinion on the likely outcomes of the technically evaluated record documents in the

context of evidentiary facts. Neutral Evaluation is used when the resolution of the conflict requires a technical evaluation of both the facts and the law. The opinion may be the subject of a written report which may be admissible at the Commission panel or court hearing.

“Panel” means a committee comprised of three or four NLC Commissioners constituted through a NLC Committee resolution to oversee or contact the preliminary investigation and to contact the primary investigation and inquiry processes for purposes of investigating a complaint or initiating an investigation and/or inquiry process required by the commission

“Present Injustice” means a land right violation that is not debarred under section 7 of the Limitation of Action Act, (Cap 22) or any other law and does not contradict a law that was in force at the time when the injustice began.

1.5 Principles of Investigation

The Commission intends to conduct the investigations herein in accordance with the following principles:

Independence: In terms of independence, investigators shall carry out their functions in accordance with Article 249(2) which provides that, “Except as provided in the Constitution, the Commission shall, in the performance of its functions, not be subject to the direction or control of any person or authority”. They shall exercise their functions free of any extraneous influence, inducement, pressures, threats or interference, direct or indirect, from any quarter for any reason.

Public Interest: The Constitution of Kenya and attendant laws state that a public office as defined by the Constitution, is a position of trust, implying a duty to act in the public interest. Therefore, the ultimate loyalty of public officials shall be to the public interests and not self-interest.

Efficiency, effectiveness and integrity: The Commission shall ensure that it performs its duties and functions efficiently,

effectively and with integrity, in accordance with laws and this guide. It shall at all times seek to ensure that public resources for which it is responsible are administered in the most effective and efficient manner.

Objectivity, fairness and impartiality: The Commission shall maintain objectivity, fairness and impartiality in the performance of its functions and, shall not use its official authority for the improper advancement of personal interest. It shall not engage in any transaction that may raise possible or perceived conflict of interest and shall report any actual or potential conflict of interest in a timely manner to relevant authorities.

Fact based reporting: In fulfilling its investigative functions, the Commission must objectively and impartially compile the evidence to establish the facts of what occurred. The Commission's role is to establish and document facts, and report all findings. These findings should avoid suppositions and assumptions and be based on substantiated facts and related analysis.

Confidentiality: The Commission shall endeavor to maintain confidentiality and impress on all witnesses their obligation to keep details of the investigations confidential and, to the extent possible, the protection of witnesses. Investigators should remember that information gathered in the course of investigation should only be divulged to others on a 'need to know' basis. It is crucial that all investigations should be conducted confidentially so as to reduce the opportunities for compromise or interference.

Professionalism and Competence: To ensure professionalism and competence, the Commission shall take reasonable steps to maintain and enhance their knowledge, skills and the personal qualities necessary for the proper performance of its duties, keeping themselves well-informed of relevant legal and emerging technical investigation developments, applicable human rights norms, and will, for this purpose, take advantage of the training and other facilities which are available to them.

CHAPTER 2

LEGAL FRAMEWORK

2.1 Jurisdiction

2.1.1 The Constitution

The commission investigates and carries out inquiries as a quasi-judicial authority to recommend appropriate redress to the appropriate authorities in respect to its public land management and administration mandates conferred under Articles 67 (2) (1) and 62(2) and (3) of the constitution. Article 67 (2) (e) mandates the commission to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress. Further the commission is mandated to conduct investigations on its own initiative or on a complaint by a member of public and has the power to summon witnesses under Article 252 of the constitution. As an administrator and manager of public land, the commission can initiate suit and be sued under Article 253 of the constitution and would need to investigate to gather evidence to support its litigation function.

2.1.2 Transitional Provision

Section 30 of the NLC Act provides that notwithstanding the provisions of the Act, any orders or notices relating to public land administration made or issued by the Ministry of Lands before the commencement of the Act shall be deemed to have been made or issued under the Act. It further provides that any function or transaction, civil proceedings or any other legal or other process in respect of any matter carried out in relation to the administration of public land, by or on behalf of the Ministry

of Lands before the commencement of the Act, shall be deemed to have been carried out under this Act. Legal instruments are applicable to the public land acquisition, disposal and reservation causes of action that arose when the said instruments were in force. The mandate that vested with the Commissioner of Lands in regard to public land vests with NLC (*Hassan Hashi Shirwa and Another v Swaleh Mohamed and 7 others* [2014] eKLR (Malindi ELC))

1.1.3 International Law and Treaties

Prior to the promulgation of the 2010 constitution, treaties had to be domesticated by national statutes and international law was applied as long as it didn't conflict with national legislation. (*Rono v Rono* 1 KLR 538 (Eldoret Court of Appeal))

Article 2 (5) of the Constitution of Kenya provides for the application of the general rules on international law in Kenya. The court of Appeal has ruled that the article is limited to the rules of international law that form part of the laws of Kenya and not all rules of international law. The court must satisfy itself that the rule being invoked is a general rule of international law and not just a rule of international law. (*Kenya Airports Authority v Mitu-Bell Welfare Society and 2 others* [2016] eKLR (Nairobi Court of Appeal)). The court of appeal further defined the general rules of international law to include: those rules that are absolute principles and are norms of international law; customary rules of international law or *jus cogens* in international law; rules from which no derogation was permitted; globally accepted standards of behavior; rules and principles applied by a large number of states either by customs or multilateral treaties. The court affirmed that the general rules of international law were not based on state consent but were obligatory on state actors and non-state actors on the basis of customary international law and peremptory norms.

Article 2 (6), COK provides that any treaty or convention ratified by Kenya shall form part of the law of Kenya. The applicability of treaties is further strengthened by statutes such as EMCA which mandates NEMA to make legislative proposals related to such treaties and conventions (Section 124, EMCA). Kenya is a signatory to the Vienna Convention on the Law of Treaties (VCLT). Article 27 of the VCLT limits State's sovereignty to invoke internal law as justification to perform its obligations under a treaty. This was reinforced by the court of Appeal that held that it is unlawful for a state that had entered into a treaty with other states by which attendant rights and obligations are vested with both the state parties and other citizens to plead that it was unable to perform its obligations due to domestic laws. (Kenya Airports Authority v Mitu-Bell Welfare Society and 2 others [2016] eKLR (Nairobi Court of Appeal).

2.2. Access to Ownership Rights

2.2.1 Determination Threshold

Access to ownership of land in Kenya could have been accessed through allocation, adjudication, settlement schemes, group ranches, compulsory acquisition, leases exceeding 21 years created out of private land, prescription, transmissions, transfers or any other manner that might be prescribed by an act of parliament. (Section 7 Land Act, 2012). Illegal allocation takes place when a party is allocated a land that is not available for allocation and irregular allocation refers to a flawed allocation process. Irregular allocation nullifies conveyable valid legal interest.

The indefeasibility of title can be challenged if it is issued through fraud and misrepresentation under Section 23 of the RTA, Cap 281 (repealed) or on the basis of existing and overriding interest or existence of trust under section 30 of RLA, Cap 300 (repealed). Section 26 of the current Land Registration Act expands the grounds of challenging the legality of how a title was acquired.

The certificate of title shall be taken as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to encumbrances, easements, restrictions and conditions contained in the certificate. The title of that proprietor shall not be subject to challenge except on grounds of fraud and misrepresentation to which the person is proved to be a party or where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

The burden of prove lies in the person who wishes the court to believe in the existence of the allegation (Section 108 of the Evidence Act). Where facts are within the special knowledge of a party, the burden of proving those facts lie with such a party (Section 112 of the Evidence Act). The party has to establish the following three elements: the party acquired a valid and legal title; carried out necessary due diligence to determine the lawful owner from whom they acquired the title and; the party paid valuable consideration. (Samuel Kamere vs Land Registrar [2015] eKLR (Kajiado Court of Appeal).

The burden of proof lies with the registered proprietor to prove legality of how the title was acquired and to show that the acquisition was legal, formal and free from encumbrances and all interests not noted in the register. (Munyua Maina vs Hiram Gathiha Maina [2013] eKLR (Nyeri Court of Appeal)

The public trust doctrine is enshrined in the constitution. Authority assigned to state officers is a public trust to be exercised in a manner that is consistent with the purpose and objects of the constitution (Article 73 (1) (a) of the COK). The county and national government hold public land in trust for the people resident in the county (Article 62 (2) and the people of Kenya (Article 62 (3) respectively. Courts have recognized the doctrine as fundamental in protection of public land and natural resources. (John Peter Mureithi and 2 others V AG and

5 others [2006] eKLR (Nairobi High Court). The constitutional doctrine supersedes the statutory principle of indefeasibility of title recognized under Section 26 of the Land Registration Act.

2.2.2 Conversion of Community Land

The only way in which trust land could be legally removed from the communal ownership of the people was through adjudication and registration or Setting Apart. Adjudication and registration removed the particular lands from the purview of community ownership and places them under individual ownership. Setting apart removed the trust lands from the dominion of community ownership and placed them under the dominion of public ownership. The old Constitution was clear that Trust lands belonged to the people who were ordinarily resident in the area in which they were situated.

Land could only be allocated to the people resident in that area. The area would be declared an Adjudication Area under the Adjudication Act. The local people would be given ample notice and opportunity to make claims of ownership to the land in accordance with their Customary Law. Their rights would be recorded on the Adjudication Register by the Adjudication officer. After everybody was satisfied with the Adjudication Process, each person whose name was on the Adjudication Register was registered as a proprietor of his/ her particular piece of land under the Registered Land Act. Once adjudicated and registered, the trust land became private land. Trust land could not be legally allocated unless this procedure was strictly followed.

Section 118 (1) of the repealed constitution provided the procedure of setting aside trust land held by the county council on behalf of the communities in that county. The president would consult with the county council when land was required for a particular purpose (Section 13(1), Trust Land Act, *Bahola Mkalindi Righo and 9 others v Michael Seth Kaseme and 2 others*

[2016] eKLR). Setting apart placed it under public ownership and extinguished any estate, interest or right in or over the land that would have been vested in any person or authority (Section 117 of the repealed constitution). Local authorities could also set apart land for public purposes such as mineral and oil extraction and beneficial uses of land.

Section 43 (1) of the Community land Act provides that no person shall occupy or use for any purpose any registered community land other than under a right acquired in accordance with the provisions of the Community land act. A person who contravenes this section commits an offence.

Under the Community land Act there are several transition provisions. The Land (Group Representatives) Act, (Cap 287) and (b) the Trust Lands Act, (Cap 288) are repealed. Under section 46 of the Act, and unless the contrary is specifically provided, any right, interest, title, power, or obligation acquired, accrued, established, coming into force or exercisable before the commencement of the Act shall be deemed to have been acquired under the Act. If any step has been taken to create, acquire, assign, transfer, or otherwise execute a disposition in community land, any such transaction shall be continued in accordance with the provisions of the Act. An instrument executed before the commencement of this Act whereby any disposition permitted under this Act is completed may be presented for registration in the prescribed register and by the relevant Registrar in reference to the law in force at the time of its execution

Under section 21 (1) of the Community land act, the register shall, in addition to the particulars set out under section 8(1) of the Land Registration Act, 2012, contain the particulars of all conversions involving community land. A registered community shall, before the conversion of registered community land into any other category of land seek and obtain approval from two

thirds of the assembly in a special meeting convened for that purpose. Community land may be converted to public land by compulsory acquisition; (b) transfer; or (c) surrender.

The following provisions of the Community land Act shall guide conversion of community land:

- Under Section 23 of the the Registered community land may, subject to the approval of the registered community, be converted to private land through (a) transfer; or (b) allocation by the registered community, subject to ratification of the assembly as provided in section 21(2) of the act.
- Under section 24 (1), public land may be converted to community land by allocation by the NLC in accordance with the Land Act. Conversion of public land to community land may be effected on a case by case basis. Private land may be converted to community land by transfer; surrender; operation of the law in relation to illegally acquired community land; operation of any other written law.
- Under section 26 (1), a community may set aside part of the registered community land for public purposes. Where land is set aside for public purposes, NLC shall gazette such parcel of land as public land.
- Under section 29 (1), a registered community may reserve special purpose areas including (a) farming areas; settlement areas; community conservation areas; access and rights of way; cultural and religious sites; urban development; or any other purpose as may be determined by the community, county government or national government for the promotion of public interest. An area designated for special purposes shall be used exclusively for the designated purposes.
- Under section 32 (1), a lease over community land shall be on the basis of an agreement between the community and the lessee and subject to such implied conditions, restrictions and covenants as may be contained in any other written law.

- Under section 33, A right of leasehold may be cancelled by a registered community, with approval of the members of the registered community, if the leaseholder fails to comply with the requirements or to adhere to any restrictions imposed by or under any law pertaining to the utilization of the land to which the right relates.
- Under section 34 (1) , any person who immediately before the commencement of the Act, held a right to use and occupy any part of community land, whether by virtue of any authority granted under any law or otherwise than under a lease, may continue to use and occupy such land under that right, subject to the same terms and conditions until the lease expires
- Under section 35 and subject to any other law, natural resources found in community land shall be used and managed in the following ways: sustainably and productively; for the benefit of the whole community including future generations; with transparency and accountability; on the basis of equitable sharing of accruing benefits.
- Under section 36 (1) and subject to any other relevant written law, an agreement relating to invest in community land shall be made after a free, open consultative process and shall contain provisions on the following aspects: an environmental, social, cultural and economic impact assessment; stakeholder consultations and involvement of the community; continuous monitoring and evaluation of the impact of the investment to the community; payment of compensation and royalties; requirement to rehabilitate the land upon completion or abandonment of the project; measures to be put in place to mitigate any negative effects of the investment; capacity building of the community and transfer of technology to the community; any other matters necessary for determining how local communities will benefit from investments in their land. An agreement relating to investment in community land shall only be made between the investor and two thirds of the adult members of the community and may request guidance from

the county government or another relevant stakeholder

- Pursuant to Article 66 of the Constitution, the State shall have the power to regulate the use of any land, or interest in or right over land, in the interest of defence, public safety, public order, public morality, public health or land use planning.
- Pursuant to the Fourth Schedule to the Constitution, the management of community land shall be subject to national and county government laws and policies relating to fishing, hunting and gathering; protection of animals and wildlife; water protection, securing sufficient residual water, hydraulic engineering and safety of dams; forestry; environmental laws; energy policy; and exploitation of minerals and natural resources.

2.2.3 Conversion of Public Land

The allocation of alienated government land was prohibited unless the prescribed legal change of use process had been complied with. Section 3 of GLA provided that the President could subject to any written law, make grants of any estates, interest or rights in or over un-alienated Government Land. The power to allocate unalienated Government land vested only in the President and no other person. The President could delegate such powers to make direct grants of unalienated Government Land to the Commissioner of Lands only in specified limited circumstances as legally itemized. In no other circumstances could the President legally delegate his powers to the Commissioner of Lands. But even the President could not exercise his powers without paying regard to the public interest.

Section 9 of the GLA provided that the Commissioner of Lands could cause any portion of a Township Plot which was not required for public purposes to be divided into plots suitable for the erection of buildings for business or residential purposes. Section 12 of the Act provided that such plots would only be sold by auction unless the President ordered gave a written exemption. Similar provisions were contained in sections 19 and

20 of the same Act with regard to Agricultural land. This meant that the Commissioner of lands could only cause the subdivision of township plots which were not required for public purposes. The land in question had to be planned and surveyed under the various Planning legislations such as the Physical Planning Act and the Survey Act before being allocated.

Neither the President, nor the Commissioner of Lands, or any other person or authority had powers to allocate public lands which had been set aside for a public purpose. Thus all public utility lands and protected lands could not be legally allocated to an individual or company by the President or the Commissioner of Lands. They could not be allocated for any purpose before being subjected to the legal change of user processes. Re-planning through Part Development Plans could not suffice to change land from alienated to un-alienated Government land and that that could not make land available for allocation. Land already committed to Government Ministries, Departments or State Corporations could not be legally allocated since it was not un-alienated Government land. Even where such land was legally surrendered for allocation, the Commissioner of Lands had to add it into the pool of un-alienated Government land before it could be allocated in conformity with the provisions of the Government Lands Act and other Planning legislation. Land that was protected under specific legislations would have to be legally removed from the specific legislations under which it was protected before it could legally be allocated.

Land that had been set apart for public purpose is not available for alienation. Where property is acquired through a procedure that is against the law, its title cannot qualify for indefeasibility. A reserved public utility is incapable of giving rise to a private proprietary interest capable of being protected by a court of law. (*Dina Management Limited v County Government of Mombasa & 5 others* [2023] eKLR). Development and use of land (Planning Regulation of 1961 made under the Planning Act,

Cap 303 (repealed) defined public purpose as “...any nonprofit making purpose declared by the minister to be a public purpose and includes educational, medical and religious purpose, public open spaces and car parks.” The Physical Planning Act gave local authorities power to reserve and maintain land planned for open spaces. Land reserved for public purpose cannot be alienated, allocated, transferred or used in any way other than for the public purpose for which it was acquired (*Kenya National Authority v Shalien Masood Mughal and 5 others* [2017] eKLR (Nairobi Court of Appeal)).

Under section 3 of GLA, only the president could make grants or disposition over unalienated land. Under the RTA and GLA, the following further elements must be established to prove legal and regular allocation took place: An application for allocation was made to the commissioner of lands and there is consent to transfer with authority given to allocate and prepare a PDP; A part development plan was drawn and approved by the commissioner of lands with the approval number and signature of the Director of Physical Planning and Commissioner of Lands; There is a Deed Plan or RIM; a letter of allotment was issued with authority for allocation at its back page; The conditions set out in the allotment letter were complied with and there is receipt of payment as proof of acceptance of the offer of allotment; valuation for stand premium and annual rent was assessed by the directorate of valuation; A cadastral survey was conducted for issuance of lease and referred to Director of survey for authentication and approval; Land Registration number was issued and there is Certificate of Lease or Title backed by the relevant white or green card that holds matching records.

In particular, the following are further details that can be used to verify and authenticate valid allocation: Gazette Notice and newspaper advert for 60 days (1998 -2019) or Signed Certificate (1998-2019); Circulation comments; Authentic Departmental

reference number; Name of the Officer who prepared it; Dates of preparation; There are minutes and list of beneficiaries against the plot numbers in case of allocation under Plot Allocation Committees. (See attached schedule 1 for more details to verify and authenticate valid allocation).

Public land act can be allocated through: public auction, direct auction to a group to ameliorate their disadvantaged position, tenders, drawing of lots, requests of proposals and through public exchange of equal value (Section 12 (1) of the Land Act). Land can be preserved for security, education, research and other strategic uses and land listed under section 12 (2) of the Land act is protected and is not available for allocation.

Section 12 of the land act provides the process through which NLC, on behalf of county and national government, allocates or voids allocation of public land or finalizes pending allocations with such terms, covenants, stipulations and reservations that it considers advisable. NLC shall upon the request of the national or a county government set aside land for investment purposes in accordance to section 12 (3) of the land act as read with Article 65 of the COK and section 28 of the land (allocation of public land) regulations, 2017. Section 16 of the Land Act as read with Section 5 of the Land Regulations, 2017 provides the process through which NLC, upon request by the national or county government may, by order in the Gazette vest the care, control and management of any reserved land with a statutory body, public corporation or a public agency. According to section 30 of the land (allocation of public land) regulations, 2017, where any public institution wishes to be allocated public land or is in actual occupation of the public land, the public institution shall apply to the commission for the formalization of the allocation and registration in the name of the institution. Pursuant to section 33 of the land (allocation of public land) regulations, 2017, the commission may allocate public land

through the process of public exchange upon request from the relevant national and county government if the private land is required for public purpose.

2.2.4 Conversion of Private Land

Article 62 of the Constitution provides that public land shall vest in and be held by a county government in trust for the people resident in the county, and shall be administered on their behalf by the National Land Commission, if it is land which at the effective date was transferred to the State by way of sale, reversion or surrender.

Section 6 (2) of the Land Acquisition Act (repealed) required the Commissioner of Lands to issue a gazette notice with a copy to be served on all interested parties notifying them of the government's intention to acquire land. The notice would disclose the acquiring body and the public purpose for which it was being acquired. Section 17 to 20 of the Land Acquisition Act (Repealed) placed an obligation for survey of the compulsorily acquired land, vesting in the government with the appropriate notice given to the Registrar of lands and the fact of acquisition noted on the land register. All the procedures related to compulsory land acquisition were set out under the Land Acquisition Act (Repealed) and were in conformity with constitutional provisions (Commissioner of Lands and another vs Coastal Aquaculture Ltd, Civil Appeal No 252 of 1996)

Article 40 of COK, guarantees protection of rights over and interests in land, whose enjoyment cannot be deprived except through compulsory acquisition for public interest only. Those whose rights are affected through compulsory acquisition are entitled to prompt and full payment. Rights of unlawfully acquired land cannot be protected under the constitution (Article 40 (6) of COK). In order to protect the right to property, a party must establish a proprietary right or interest in the land (Joseph

Ihugo Mwaura and Others vs The Attorney General and Others [2012] eKLR. (Nairobi High court).

The current law of land acquisition of rights and interests in land is in sections 107 to 133 of the Land Act 2012 as read with Article 40 of the COK, 2010 and Part V of the Land Regulations, 2017. The Commission can reject a request for acquisition if it establishes that the request does not meet the requirements prescribed in Section 107 (2) of the Land Act, 2012 or Article 40 (3) of the Constitution. Interested persons include any person whose interest appear in the land registry and the spouse (s) of any such person as well as any person actually occupying the land and the spouse (s) of such person. (Section 7 (7), Land Act, 2012.

Section 107 of the Land Act provides that whenever the national or county government find it necessary to compulsorily acquire land, the respective Cabinet Secretary or County Executive Committee Member is required to submit a request for acquisition of public land to the NLC providing a reason for acquisition which must not be remote or fanciful (*Patrick Musimba vs National Land Commission and 4 others* [2016] eKLR). As part of due diligence, NLC must ensure that the land to be acquired is authenticated by the survey department to ascertain the real owner and to inspect and ascertain whether the land is suitable for the intended purpose (Section 108, Land Act, 2012).

The acquiring body provides NLC with a list of affected persons, affected parcels, respective owners, title search details, cadastral maps of affected areas and Resettlement Action Plan (RAP) for consideration. Upon approval of the request for compulsory acquisition, NLC shall publish a notice of intention in the Gazette indicating that the land is required for a public purpose or in the public purpose as related to and necessary for fulfillment of a stated public purpose. A notice to compulsorily acquire land must be clear (*Town Council of Awendo vs Nelson Oduor*

Onyango and 13 others [2014] eKLR) and failure to give notice is in itself a denial of natural justice and fairness (*Sceneries Limited vs National Land Commission* [2017] eKLR. The notice is delivered to the land registrar and to every person interested in the land. All land to be compulsorily acquired shall be geo-referenced and authenticated by the authority responsible for survey both at the national and county government (Section 107 (8) of the Land Act.

At least 30 days after publication of the notice to acquire and at least 15 days before the date of inquiry, the commission is required to serve a notice of inquiry on every person who appears to have an interest in the land in question (Section 112(1), Land act) and the commission shall have the powers of the Court to summon and examine witnesses including interested persons and acquiring body. It shall have the power to administer oaths and affirmations and to compel production and delivery of title document (Section 112(5), Land act).

Compulsory land acquisition must follow due process requirements under Article 40 of the Constitution of Kenya (*Patrick Musimba vs National Land Commission and 4 others* [2016] eKLR). Due process includes giving the requisite notice before demolishing any existing property (Section 49 (1) Kenya Roads Act 2007). Subject to Article 40 (2) of the COK and Section 122 and 128 of the Land Act, 2012, the valuation award issued by the commission shall be the final and conclusive evidence of the size of the land to be acquired, the value and the amount of compensation payable. Every award will be filed in the office of the commission. The burden is upon the Commission as the entity with the sole responsibility of conducting the preliminary and inquiry processes since neither the constitution nor the Land Act contemplates the involvement of any other parties at this stage (*Margaret Wanjiru Mburu and 6 others vs National Land Commission* [2017] eKLR (*Naironi High Court*).

The Land Act was amended in 2019 through the Land Value Amendment Act of 2019 to make the following additions to the acquisition process:

- If the Commission establishes that the request to acquire meets the requirements prescribed under subsection (2) and Article 40(3) of the Constitution, the Commission shall cause the affected land to be mapped out and valued by the Commission using the valuation criteria set out under the Act; and establish that the acquiring authority has identified the number and maintains a register of persons in actual occupation of the land, confirming for each such occupation how much time they have been in uninterrupted occupation or ownership of interest in the land prior to the date of the request for acquisition of the land, and the improvements thereon.
- The notice to acquire shall contain the purpose for which the land is to be compulsorily acquired the location, general description and approximate area of the land.
- Upon receipt of the notice under subsection (5), the Registrar shall make an order, pursuant to section 76 (1) of the Land Registration Act, 2012, prohibiting or restricting dealings with the affected portion of land thereof until it vests in the acquiring authority.

2.3 Administrative law

2.3.1 Elements for Consideration

Although the commission is not bound by strict rules of evidence (Section 6 (NLC Act 6 (3) (a)), its proceedings like all matters of public governance should be based on the cardinal principle of rule of law but not on personal whims. Rule of law is greatly concerned with official action and relies on common law and arises whenever a person becomes a victim of arbitrary exercise of power.

Administration law is mainly understood to refer to 3 factors of public administration: legality, judicial independence and fairness. Every government action must be legally sanctioned and decided fairly by independent officials (Article 50 (1) COK). Article 10 of COK provides for national values and principles which bind state officers. Article 259 (1) (b) of COK requires interpretation of the constitution to be in a manner that promotes rule of law. A man may not be a judge in his own case and a man's defense must always be heard are principles of natural justice which are components of common law which is applicable in Kenya.

ARTICLE 47 of COK provides:

- a) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair
- b) It is a right of fundamental freedom if a person has been or is likely to be adversely affected by administrative action that the person has the right to be given written reasons for the action
- c) Parliament shall enact legislation to give effect to these rights to review administrative action by a court of law or an independent tribunal and promote efficient administrative action

2.3.2 Enforceability

Administrative law is enforceable through public law remedies of certiorari, prohibition and mandamus. It can also be enforced through existing statutory remedies (Section 11 of Fair Administrative Action (FAA)). Article 22(1) of COK grants the right to institute court proceedings. Article 23(2) of COK provides that in any proceedings brought under Article 22, the court may provide remedies which include declaration of rights, injunction, conservatory order, declaration of invalidity of law, order of compensation and an order of judicial review.

Certiorari, prohibition and mandamus are prerogative public law remedies. Certiorari seeks to quash a decision or action that has already been made. Decision of an authority or official is brought to the high court in order that it might be investigated and possibly quashed. It puts the authority within the confines of limited jurisdiction and addresses what has happened. Prohibition prohibits an action that is yet to occur. Mandamus is compelling in nature and is employed when a person wants to compel a government authority to do something required by law.

Public law remedies are obtained through the process of judicial review provided for under Order 53 of the Civil Procedure Rules. Application for judicial review is done at two stages: i) firstly, by a preliminary ex-parte application in chambers accompanied by statement setting out the name and description of the applicant, relief sought and grounds supporting it. The application may operate as an order of stay if the court directs; ii) the other stage can be at the filing of the main application. This is done by way of motion and must be done 21 days after grant of leave.

Fair Administrative Action Act 2015, FAA) establishes the legal framework for the exercise of judicial review functions of the court and the circumstances through which the powers may be exercised (Section 7(1), FAA). The court is barred from exercising judicial review jurisdiction in matters where the statutory dispute mechanisms for appeal or review have not been exhausted and is empowered to order such exhaustion before institution of proceedings. High court can make an exemption for an aggrieved party (Section 9(2)(3)(4), FAA)

The commission has no jurisdiction to determine a matter that is *subjudice* or *resjudicata* but it can carry out independent investigations on the legality of the title in question, for purposes of adduction of evidence in pending court cases to enable the court make an appropriate decision (Robert Mutiso Lelli and Cabin Crew Investments vs National Land Commission and 3

others [2017] eKLR (High Court of Kenya).

Section 6 of the Civil Procedure Act provides that no court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.

No court shall try any suit or issue in which the matter directly or substantially has directly and substantially been in issue in former suits (Section 7, CPA and Article 27 (1) and 50 (1) of COK. The following were established as the elements that prove *res judicata* in the case of John Florence Maritime Services Limited and another v Cabinet Secretary of transport and infrastructure and 3 others (Supreme Court Petition 17 of 2015): There is former judgment or order which was final; The judgment or order is on merit and was rendered by a court with jurisdiction over the subject matter; and identical parties, subject matter and cause of action exist between the first and the second action.

Where a party claims that it was not accorded an opportunity to be heard, it is upon the party who claims that sufficient opportunity was accorded to the other party, to demonstrate that the due process was followed in arriving at the impugned decision. The commission must demonstrate this from adherence to its procedures and minutes. Section 19(1) of the National Land Commission Act, it is stipulated that the business and affairs of the commission shall be conducted in accordance with the Fourth Schedule. The Schedule provides for Rules of Procedure and minutes and stipulates in Section 5 thereof that:

- a) The Commission shall determine rules of procedure for the conduct of its business
 - b) Keep minutes of its proceedings and decisions.
-

2.3.3 Threshold for Judicial Review

Jurisprudence has established the threshold for judicial review. In the case of *Republic vs Attorney General & 4 others Ex parte Diamond Hashim Lalji and Ahmed Hasham* [2014] e KLR, the court observed that:

“Judicial Review application does not deal with the merits of the case but only with the process. In other words Judicial Review only determines

- i. Whether the decision makers had the jurisdiction.*
 - ii. Whether the persons affected by the decision were heard before it was made and whether in making the decision the maker took into account relevant matters or did take into account irrelevant matters.”*
-

Pastoli v Kabale District Local Government Council & Others [2008] 2 EA 300 sets out the test to be applied for Judicial Review proceedings to succeed namely:

1. The applicant has to show that the decision or act complained of is illegal. That is “...*when the decision making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires or contrary to the provisions of a law or its principles are instances of illegality.*”
2. The applicant can establish irrationality. That is when the decision taken or act done is so unreasonable that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision, The decision is a defiance of logic and acceptable moral standards
3. The applicant can establish procedural impropriety. This occurs when there is a failure to act fairly on the part of the decision making authority in the process of taking a decision. The unfairness may be in non-observance of the rules of

natural justice. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative instrument.

Elements of *ultra vires* have been established in *Republic vs Ministry of Planning and Another, HCC Miscellaneous Application 1769/03* where the court quashed a decision of a statutory body for failure to comply with the legislative purpose, and stated: *“So where a body uses its powers in a manifestly unreasonable manner, acted in bad faith, refuses to take relevant factors into account in reaching the decision or based it on irrelevant factors, the court would intervene on that ground that the body has in each case abused its powers.”*

It has been established that if a tribunal mistook the law applicable to the facts as it had found them, it must have asked itself the wrong question which it was not empowered to inquire and so has no jurisdiction to determine the purported determination. The determination is not within the meaning of empowering legislation and it is therefore a nullity. The award and purported entering of the judgment in terms of the award become nullities. (*Anisminic vs Foreign Compensation [1969] 2 AC 147* principle applied in *Republic vs Kajiado Land Disputes Tribunal SRM’s Court Kajiado & 3 Others HCC 689/2001*)

2.4 Planning and Environment

2.4.1 Natural Resources

Pursuant to Article 62(2) (3) and Article 67 (2) (h) of COK, the Commission administers public land on behalf of the national government as well as monitors and oversights its related planning. Public land includes the following natural resources:

- All minerals and mineral oils as defined by law;
- Government forests other than forests to which Article 63(2)

- (d)(i) Applies, government game reserves, water catchment areas, national parks, government animal sanctuaries, and specially protected areas;
- All rivers, lakes and other water bodies as defined by an Act of Parliament;
 - The territorial sea, the exclusive economic zone and the sea bed;
 - The continental shelf;
 - All land between the high and low water marks.

Section 19 of LA gives the scope of NLC role in natural resource management and mandates it to regulate the conservation, protection of critical systems, use, registration, utilization and management of natural resources.

Investigation recommendations of the commission support its constitutional mandate to defend the constitution (Article 249 COK). Article 69 of the constitution gives the commission, as a state actor, the responsibility of ensuring sustainable exploitation, utilization, management and conservation of the environment and natural resources. It also mandates it to ensure the equitable sharing of the accruing benefits, to protect genetic resources and biological diversity and to eliminate processes and activities that are likely to endanger the environment.

The commission's recommendations are grounded on land principles envisaged under Article 60 of COK. The recommendations should factor in the holding, use and management of land in a manner that is equitable, efficient and sustainable and productive and yet ensures sound conservation and protection of ecologically sensitive areas. Article 66 of COK envisages regulation of land use planning for public health. Article 42 guarantees the right to a clean and healthy environment and requires the environment to be protected for current and future generations

The National Environment Policy, 2013 aims to provide a framework for an integrated approach to sustainable management of Kenya's environment and natural resources. In particular it proposes to integrate environmental management with economic growth, poverty reduction and improving livelihoods. The doctrine of public trust imposes a duty on the government and its agencies to strike a proper balance between economic development and the needs of a clean and healthy environment. (Kiluwa limited and another vs Commissioner of lands and three others [2015] eKLR (Mombasa high court).

2.4.2. Water Resources

In the management of marine resources, a marine conservation area must adopt a zoning system that takes into account extraction or no extraction, protection of breeding, no take areas of fisheries and any other purposes in respect to specified human activities (Section 36 (3) WMCA). Fisheries Management and Development Act 2016, provides for sustainable use, conservation of fisheries resource and habitat.

Kenya has ratified the Protocol to the convention on the prevention of Marine Pollution by Dumping of Wastes and other Matter for protection of oceans, seas, coastal areas as well as the protection, rational use and the development of their living resources. The CS is empowered to declare any marine area as marine conservation area (Section 36(1) (a) and (b), WMCA)

The right to clean and safe water is a constitutional right (Article 43(1)(d), COK) and is protected in the right to food and health (Article 43(1)(a) and (c) COK). Water pollution is an offence under the provisions of EMCA (section 72). Fresh water resources include both issues of quality as well as quantity. The ELC has adopted precautionary approach in protecting the underground water facing contamination (NEMA and another v Gerick Kenya Limited [2016] eKLR (Kisii High Court) and pollution of Nairobi river (Isaiah Luyara Odando & another v

National Management Environmental Authority & 2 others; County Government of Nairobi & 5 others (Interested Parties) [2021] eKLR (ELC Court Nairobi). In the Isaiah Luyara case, NEMA was directed to perform its duties under EMCA and the Environmental Management and Coordination (Water Quality) Regulations of 2006 and to file reports in court every four months showing the measures taken to rid the Nairobi and Athi River of pollution. All the counties which the Nairobi and Athi River courses through were directed to *“eliminate all pollution from the river and to act in a precautionary manner by eliminating activities along the river which may pose a risk to human health or the environment.”*

2.4.3. Forests

As per section 30(1)FCMA, public forests include public forests under Article 62(1) (g) COK and those on land between high and low water marks under Article 62(1) (1) COK. The principles of effective forest management requires a balance of socio-economic, ecological, cultural and spiritual needs of present and future generations. It also has to factor in the control of harmful pollutants, forest degradation and the vital non-economic benefits of their preservation (The Forest Principles UN Doc A/Conf. 151/26 (1992). This is given effect under Article 69 of the constitution and operationalized by the Forest Conservation and Management Act (FCMA) of 2016 that repealed the Forest Act , Cap 385) and the Timber Act, Cap 386. The Forest Policy focuses on the sustainable use of forest resources.

The FCMA act establishes the Kenya Forest Service that is mandated, in collaboration with stakeholders such as the commission to prepare and manage forest management plans, license permits in relation to forest resources, manage water catchment areas, recommend to CS establishment of public forests on any public land and develop and update database for all forests.

In particular, CS may after consultation with NLC declare in the gazette any unalienated public land or any land purchase or acquisition by KFS to be a public forest (section 32(1) FCMA). Land that is declared to be forest land nullifies and voids any subsequent transfers (Daniel Maina Kibage (duly registered attorney of Gabriel Githaiga) vs KFS, ELC case number 96 of 2017). The right to life of indigenous and local communities, particularly forest dwellers is protected as well as their socio-economic rights under Article 43 of the COK (Joseph Letuya and 21 others v AG and 5 others [2014] eKLR (Nairobi ELC). The court added that the eviction of the Ogiek community contravened their right not to be discriminated under section 82 of the 1963 constitution and under Articles 27 and 56 of the COK.

Riparian reserves are ecologically sensitive areas and require environmental protection (Article 60 of COK). They include land adjacent to the ocean, lake, sea, rivers, dams and water courses under the Survey Act and any other law. (Section 2, LA). EMCA protection of riparian reserves restricts the activities under section 42 of EMCA. The court of appeal has held that unauthorized entry in total disregard of riparian proprietor's rights and intentional violation of the mandatory provisions of the Water Act amounts to act of trespass (Brookebond (K) Limited v James Bii [2013] eKLR. The ELC court has overruled the application of the doctrines of accretion and alluvion where boundaries are fixed without any reference to water and ruled that the constitution, LTA, GLA and UNCLOS must be considered (Tukero Ole Kina and another v Tahir Sheikh Said and 5 others [2015] eKLR (Malindi ELC). NEMA regulates discharge of effluents subject to requirements of the residents and ecosystems (Section 75 of EMCA)

The law on riparian reserves is fragmented across a number of legislation and regulations that include: LA, NLC, SA, WA 2016, agriculture (farm forestry) Rules 2009, water resource

management rules 2007, the EMCA (water quality) regulations 2006, EMCA (wetlands riverbanks, river shores management) rules, EMCA (waste management) regulations, the EMCA (conservation of biodiversity) regulations, FMCA and WMCA . The fragmentation causes conflicting rules governing the law on riparian reserves.

2.4.4. Wildlife

The wildlife conservation and management act (WMCA) with the Wildlife Policy 2012 governs the protection, conservation and management of wildlife. The CS in consultation with the commission may designate certain wildlife ecosystems and habitats that are endangered threatened and need protection (Section 46 WMCA). The CS is empowered under WMCA to declare an area to be a national park in consultation with NLC, following public participation and with the approval of the national assembly (Sections 31(1) (a) and Section 32 WMCA). KWS is mandated to conserve and manage national parks, wildlife conservation and sanctuaries including national park management plans and advice NLC, CS and the council established under WMCA on their establishment. (Section 7(a) (i)and)m) WMCA.)

The NLC is mandated to determine whether the occupation of public land is lawful. (Section 155(2) LA). Where land is reserved for the primary use of wildlife, the commission is mandated to take in consideration whether the occupation is hindering or preventing the use of the land by wildlife or is in practice in harmony with that use. (Section 155 (4) (f) LA). The CS is empowered to declare the areas listed under Sections 31-38 of the WMCA public for wildlife conservation and management. Cessation of an area as a national park, reserve and local sanctuary must conform to proper procedure for revoking or withdrawing a legal notice. The Nyambene National reserve had not been *degazetted* and the land on which it was situated

was not available for alienation. (Samuel Mamaroo M'kacera and 9 others v Meru County Government and 3 others, ELC Petition No. 33 of 2014).

2.4.5. Mineral Rights

Articles 60, 62 (1) (f), 66 (2), 69, and 71 of the COK articulates the legal framework of mineral rights. The constitution is operationalized by the Gold Mines Development Loans Act, The Continental Shelf Act and the Mining Act, 2016 that govern the prospecting and mining of minerals. Prior to the grant of a mineral right, applicants must seek approval of NLC where the right is on public land and from the relevant CS or CECM or from affected private owner's or appropriate authority for community land pursuant to section 36 of the Mining Act, 2016. Acquisition of EIA license and social heritage assessment and approval of an environmental management plan is mandatory (Section 176, Mining Act, 2016). EIA license is a precondition for the issuance of a mining license and where mining is to be conducted in a protected area such as a gazette forest or national monument area, the necessary consents by the relevant agencies must be procured (Cortex Mining Kenya Limited v Cabinet Secretary of Ministry of Mining and 9 others [2013] eKLR (Nairobi High Court)).

Licensees or permit orders are obligated to ensure sustainable use through restoration of abandoned mines and quarries, elimination of pollution and blasts as well as restoration of land to its original status (Section 179 of the Mining Act, 2016). Under the Mining Act. Cap 306, the minister was the final authority in deciding whether to revoke a license issued by the Commissioner of mines (Cortex Mining Kenya Limited v Cabinet ministry of mining and 9 others [2013] eKLR (Nairobi High Court))

2.5 Historical Land injustice

Pursuant to Article 67 (2) (e) of the Constitution, NLC shall initiate investigations, at its own initiative or on a complaint, into present and historical land injustices, and recommend appropriate redress.

2.5.1 Admissibility Criteria

In order to determine whether a claim meets the definition of an historical injustice grievance and can be admitted, registered and processed by the commission, the screening of the received documents shall establish whether the allegations amount to the following criteria under Section 15 (2) of the NLC Act;

- a) was occasioned by a violation of right in land on the basis of any law, policy, declaration, administrative practice, treaty or agreement;
- b) resulted in displacement from their habitual place of residence;
- c) occurred between 15th June 1895 when Kenya became a protectorate under the British East African Protectorate and 27th August, 2010 when the Constitution of Kenya was promulgated
- d) has not been sufficiently resolved and subsists up to 27th August, 2010 when the Constitution of Kenya was promulgated.
- e) meets the following admissibility criteria to be admitted and processed by the commission as set out under Section 15 (3) of the act: (1) it is verifiable that the act complained of resulted in displacement of the claimant or other form of historical land injustice; (2) the claim has not or is not capable of being addressed through the ordinary court system on the basis that— (i) the claim contradicts a law

that was in force at the time when the injustice began; or
(ii) the claim is debarred under section 7 of the Limitation of Actions Act, (Cap. 22) or any other law;

- f) the claimant was either a proprietor or occupant of the land upon which the claim is based
- g) no action or omission on the part of the claimant amounts to surrender or renouncement of the right to the land in question;
- h) is brought within five years from the date of commencement of this Act (As amended in 2016)

2.5.2 Facts to be Established

A claim alleging historical land injustice shall be permissible if it was occasioned by:

- a) colonial occupation;
- b) independence struggle;
- c) pre-independence treaty or agreement between a community and the government;
- d) development-induced displacement for which no adequate compensation or other form of remedy was provided, including conversion of non-public land into public land;
- e) inequitable land adjudication process or resettlement scheme;
- f) politically motivated or conflict based eviction;
- g) corruption or other form of illegality;
- h) natural disaster; or
- i) other cause approved by the Commission.

2.5.3 Remedies for Historical Land Injustice Claims

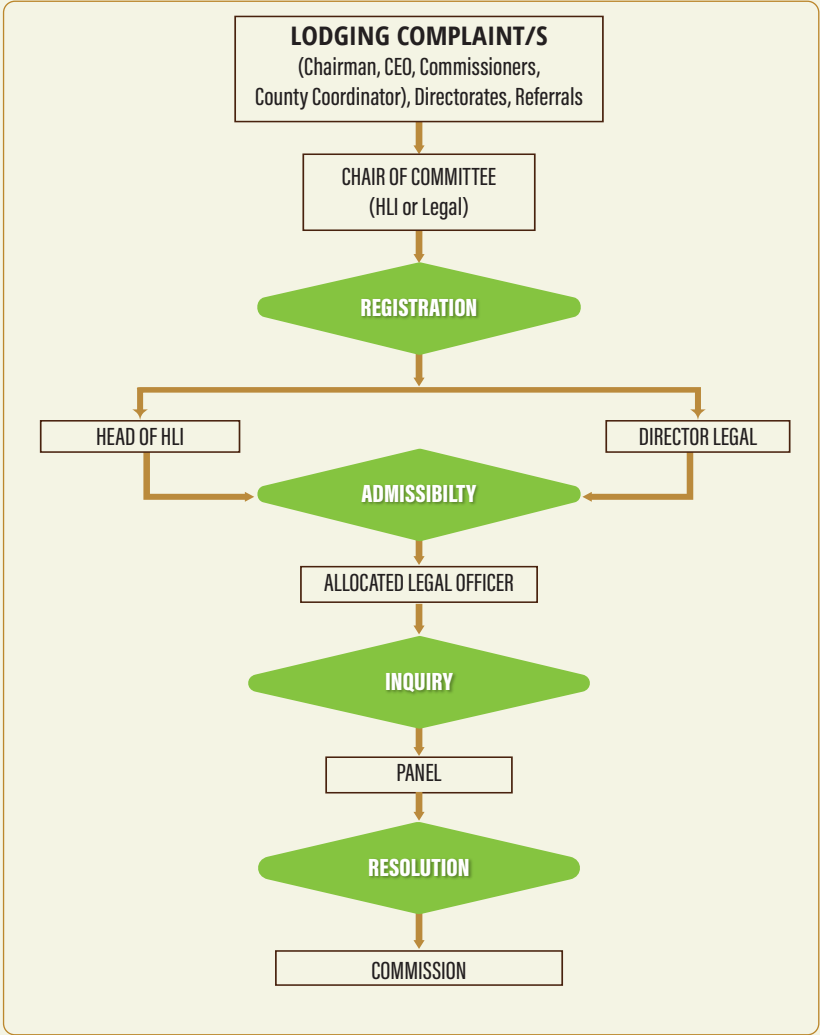
Pursuant to Section 15 (2) of the NLC Act, the Commission shall after investigating any case of historical land injustice referred to it, recommend any of the following remedies:

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

CHAPTER 3:

INVESTIGATION AND INQUIRY PROCEDURES

3.1 Chart on the complaints processing structure



3.2. Lodging of Complaints

A complaint refers to information received which indicates or alleges that a land rights violation has occurred. Complaints may be lodged at the Chairman's office, at the CEO's office, at the County Coordinator's office and other Committee chairs. A complaint can come in the form of a letter, email, media, electronically or on the Commission's own initiative. Complaints that meet the threshold of Section 15 of NLC Act shall be referred to the Head of HLI ad hoc Secretariat and the rest shall be referred to Chair of legal Affairs and Dispute Resolution.

3.3 Registration and Assessment of the Complaint

The Complaints shall be registered, assessed by the respective Committee chairs and referred to either the Legal Director or the Head of HLI Secretariat. The committee chair shall assess the claim on priority and threshold criteria through a conference with the Commission Chairman and CEO as necessary. The committee chair shall set timelines for urgent matters as necessary.

The Committee registry office responsible shall keep a register of complaint in which all complaints shall upon receipt be entered and given a reference number. The commission handling and closure of files shall be monitored through a tracking system developed and overseen by the Director of Legal and the Head of HLI Secretariat. The system shall be copied to the respective Committee chair and a notification update shall be made at every stage of the file handling process. The following handling stages shall be noted by the following:

- a) The file movement from one officer or department to another will be recorded by the relevant Registry clerk
- b) Legal Director or Head of HLI Secretariat will record the Committee Chair considerations and the outcome of the admissibility criteria

- c) The Legal Officer who will be allocated to spearhead the preliminary and advanced investigation stages will be assigned the case file for processing and will be expected to update the outcome of each stage of the case progress in the designated tracking system. He will be oversighted by the Legal Director or Head of HLI Secretariat as necessary. He will update the investigation outcome report as soon as it is submitted to the panel. Thereafter he will update the following milestones of the case processing as applicable; completion of information gathering, completion of panel deliberations after hearing, commission resolution, dispatch and publication of the commission resolution and each stage of the chosen ADR process
- d) A file will be marked as closed by the Head of HLI or the Legal Director under the following circumstances and the reasons of closure will be sent in writing to all the affected parties: When it is not admissible; when the panel has made, dispatched and published its recommendations; when a settlement agreement has been signed after an ADR process and shared with the implementing stakeholders; when the court report is filed in court after a court referral to the commission and a judgment is entered which is not appealed against.

3.4 Screening on Admissibility

Upon vetting a complaint, the Legal Director or Head of HLI Secretariat shall within fourteen (14) days of receipt acknowledge receipt and notify the complainant of the decision of the Commission which may include any of the following: -

- 1) admission of the complaint for investigation;
- 2) request for more information;
- 3) rejection of the complaint with reasons;
- 4) reference of the complainant to other relevant institutions/mechanisms; or

- 5) consolidation of the complaint with complaints of a similar nature.

The complainant and the interested parties shall be informed of the decision whether or not a complaint will be investigated within the (14) fourteen days of that decision and the reasons for the decision. Upon notification of the decision to investigate, the complainant and the interested parties may be requested to submit further documents as necessary or respond to the Commission decision not to investigate within fourteen days. If no response is received on the decision not to investigate, the file shall be marked as closed.

3.5 Preliminary Considerations

Once a complaint has been registered and admitted, the Legal Director or head of HLI shall immediately allocate the complaint to the Legal Officer who shall spearhead early neutral evaluation of any affected parties' issues, rights, interests, positions and produce a legal opinion with a work plan within ninety (90) days. The Legal Director or Head of HLI shall supervise the allocated Legal Officer.

The Legal Officer will write to or call the complainant and request for any additional requisite information within a certain timeline. Upon receipt of the complainant's information and documents in addition to what is in the file, the Legal Officer will call or write to the respondent to call on him for response or to remit, within a certain timeline, through correspondence a response to the complainant's claims. The legal officer shall determine the issues and the most appropriate process of resolving each of the issues of the dispute in conjunction with the relevant technical directorates. The officer shall then conduct research on procedural and substantive issues according to the relevant law, policy and administrative procedures and processes and prepare a legal opinion.

At this initial early evaluation stage, the Legal Officer will determine and propose the most appropriate resolution process by considering the following factors:

- a) The most appropriate process of resolving each of the issues of the dispute.

The Legal officer can determine this at this stage depending on the gathered information or he can propose that the panel needs to carry out further related assessment at a pre-conference meeting with all the affected parties and stakeholders. The determination of the resolution process will depend on the following: the stage of the conflict; relief sought; need of a creative result; need of the parties to guide the process through their own notions of fairness; the value the parties place on their relationship; the extend to which parties need to cooperate in implementing or complying with a resolution; whether the parties require to be listened to or to participate in the process and retain control over the outcome; the need of a final result; need of public interest case to establish a principle for future disputes or not

- b) The nature of the conflict and the number of parties involved.**

The historical dynamics of the conflict and communal engagements might require technical neutral evaluations and determinations on the way forward on a variety of issues at a public participation conference attended by the panel and other stakeholders

- c) The nature of the issues, rights, positions and interests.

These will be those of the complainant, respondent, and any parties that might be affected by the resolution of the dispute. These may better be distilled in a panel conference if the matter is complex and involves many parties.

- d) The nature of processes available to NLC for resolving each of the issues of the dispute.

The commissioners have constitutional powers to be mediators, conciliators and negotiators (Article 252, COK) to execute their functions and these ADR processes are available in every case, at any time and are governed by the court's CPA and CPR rules for matters in court (See Judiciary section in paragraph 5)

- e) The reasons why the available resolution processes are viable for resolving the disputes including the parties' willingness to use any of them.

The parties may opt for or be ordered by a court settlement order to be facilitated by the NLC. In most land disputes there may be technical survey and planning matters that require neutral evaluation. (See definition of facilitation and neutral evaluation under 1.4). Neutral evaluation can clarify outcomes where the conflict is based on technical controversies. Mediation, negotiation and conciliation (See definition under 1.4) may be proposed. These are private, unstructured and informal processes. They are non-adversarial, quicker and enable creative and restorative solutions. They lead to an agreed settlement that can be enforced in or out of court. In negotiation and conciliation, parties agree directly. Conciliators do not usually take an active role in resolving the dispute but may help with setting the agenda, record keeping and administration and moderation. They may also act as a go between when the parties do not meet directly. In mediation, the parties will agree on a mediator and the NLC Commission panel or member or an outside accredited mediator will be the mediator if the parties agree out of court or before the court as per settlement order

- f) The favorable and unfavorable indicators for choosing any of the processes that he will choose to propose.

Viability of a process can be determined by existing power imbalance of the parties and the agreement is not enforceable if the parties do not conform. A deadline should be proposed and fixed to result to other resolution methods if parties fail to conform

The legal opinion shall clarify all issues, analyze the applicable procedural and substantive law and make a conclusive road-map on the best cause of action. The legal opinion shall include an evaluation report which shall constitute a mid-point outcome between the claim intake and the selection of the binding adjudication process. The evaluation report will help the Commission to map out the best resolution process, the parties involved, the roles of those parties in the process and its role in the process. The report is informed by the existing records, witness statements, site visits, received information from claimants and stakeholders and the relevant legal research. The legal officer shall submit the legal opinion to the Legal Director or Head of HLI Secretariat.

Upon receipt of the legal opinion, the Legal Director or Head of HLI Secretariat shall determine whether the complaint should proceed for investigation by the Commission or refer the complaint to another institution and close the file. When decision to close the file is made, the file shall be tabled before the relevant committee for consideration and noting. Section 16 (1) of the NLC Act provides that the commission may establish committees for the better carrying out of its functions. The relevant Committee is established and/or constituted according to Commission resolution.

Upon establishing that the Complaint should proceed for investigation, the Legal Director or Head of HLI Secretariat

shall refer the matter to his/her relevant constituted Committee for evaluation of the legal opinion to map out the best resolution process/s, committee activities, roles of different committee members, roles of other internal and external stakeholders and activity timelines. Where activities require a Committee panel to be seized with the matter (herein after referred to as the panel) the Committee shall constitute the panel which must consist of at least the Chairperson and two commissioners.

3.6 Inquiry Activities

Upon receipt of the file record constituting the complaint/s, documents submitted by the parties, documents collected by the Legal Officer and the evaluation report, the panel will evaluate the record and proceed in any of the following ways –

- a) Gather information
- b) Discontinue investigation
- c) Hear the parties
- d) Employ ADR

3.6.1 Gather information

According to Section (6) (3) (a) (b) and (c) of the NLC Act, the commission shall inform itself in such a manner as it may consider necessary, may receive both oral and written statements and is not bound by strict rules of evidence

Upon determination by the panel that the information contained in the investigation record is not sufficient to enable the panel to make a decision, the panel may request for more information from the parties. Section 6 (2) (a) of the NLC Act gives the commission power to gather, by such means as it considers appropriate, any relevant information, including requisition of reports, records, documents or any information from any source, including any state organ and to compel the production of such information where it considers necessary.

Pursuant to Sections 15 (5) (a) and 6 (2) (a) of the NLC Act the Panel may by notice in writing, addressed and delivered by a staff of the Commission to any person, direct such person, in relation to any investigation, to appear before the Commission at such time and place as may be specified in the notice to produce such documents, reports or objects in the possession, custody or under the control of such person and which are relevant to that investigation and undertake any other action that the commission considers necessary to gather relevant information. A staff of the commission can be authorized to receive the requested documents, reports or objects and file them to form part of the record.

If the information or report called for is not received within the time stipulated by the Commission, the Panel may proceed to inquire into the Complaint without such information or report. If on receipt of the information, report, or upon inquiry the Commission is satisfied either that no further action is required or that the required action has been initiated by a State organ or other public body responsible for the matter complained of, the Commission shall inform the complainant accordingly and may take no further action with reasons in writing

Where it considers necessary, the panel may authorize an appropriate team of technical officers to support the investigation on their own or led by one or two or all of its members as the circumstances entail. The panel may authorize and/or co-opt external stakeholders to support the Commission's investigations as necessary. The investigation of the authorized team may include registry searches, site visits, interviews, collection and verification of documents. Where a community is involved, the panel may send one or two of its members to engage the community and other relevant stakeholders to gather information, inform the process and plan activities for the best agreed resolution modalities.

Where it considers necessary, the panel may notify all interested persons in writing at least fourteen (14) days before of its intention to visit the site of the disputed property. The Panel or one of its members may conduct the site visit with any other authorized persons as they deem necessary. A ground status report will be prepared and will form part of the investigation record.

A Legal Officer shall spearhead the authorized investigation technical team and shall consolidate the investigation record and prepare the panel work plan with activities, budget and set out timelines. The allocated Legal Officer shall submit the investigation record to the Director or Head of HLI Secretariat who will assess and submit it to the respective committee for planning and further action. The Director and the Head of HLI Secretariat will use the work plan to make decisions on prioritization of the resolution of the complaints and to develop the budget in liaison with the office of the Secretary/CEO. The Director and the Head of HLI Secretariat will submit the work plan activities to the respective Committees for planning.

3.6.2 Discontinue the investigation

- i. If the issues for investigation are before a Court of law except for the purpose of gathering evidence to establish the Commission's position for supporting litigation in Court or for any other appropriate action.
- ii. If the complaint has been adequately considered and remedied by the commission or any authorized institution under any written law or administrative practice or through an appropriate community initiative pursuant to Articles 67 (7) (f) and 60 (g) of the COK
- iii. If the Complaint is frivolous, vexatious or not in good faith.
- iv. If the Commission does not have jurisdiction to investigate or issues do not meet the threshold under the relevant law.

- v. When the complainant withdraws a complaint that is pending before the panel and the panel decides not to continue with the investigation at its own initiative

Notwithstanding anything provided in these Guide, a complainant or interested party may apply for review of any decision of the Commission within three months upon discovery of new facts or evidence or error of law committed in making the decision. Where the Panel decides to discontinue the investigation, it shall immediately inform all the interested parties in writing stating the reasons of the decision.

3.6.3 Hear Parties

Pursuant to Sections 15 (5) (a) and 6 (2) (a) of the NLC Act the Panel may by notice in writing, addressed and delivered by a staff of the Commission to any person direct such person, in relation to any investigation, to appear before the panel at such time and place as may be specified in the notice to produce such documents, reports or objects in the possession, custody or under the control of such person and which are relevant to that investigation.

The panel may decide to summon one or more parties to appear before them to bring documents, to clarify or authenticate issues or information or to respond to a claim which they have not heard a chance to respond to or which needs clarification. The Panel shall summon a person or an authorized representative of a state organ, organization and community or as may be determined by the Panel, if an allegation has been made against them and they have not had an opportunity to make representations concerning the issue(s) in the investigation record.

The representation shall be made to the panel or to any other person as may be duly authorized by the panel for that purpose. Summoned parties can include the complainant, the respondent, interested party, technical witnesses and other witnesses to be

determined by the panel. Pursuant to section(15) (6) of the NLC Act, Where a complainant is unable to provide all the information necessary for the adequate submission or investigation of a complaint, the Commission shall take reasonable steps to have this information made available.

The Panel may summon a person or a representative of an organization, state organ or community to produce reports, records, documents or any information or to record a statement, or testify in order to establish a pertinent element. Subject to the direction and control of the Panel, an oath or affirmation shall be administered on the summoned person.

Where the Panel is of the opinion that because the parties to any proceeding before it are so numerous or for any other reason it is impracticable to give notice of the hearing individually to the parties or persons entitled to receive notice, the panel may instead cause reasonable notice of the hearing to be given to such parties or persons by advertisement in at least one newspaper with national circulation or otherwise as the panel may direct.

According to Section (15) (7) of the NLC Act, If at any stage during the course of an investigation, the Commission is of the opinion that the resources of the Commission may be more effectively utilized if all claims within a given area or township were to be investigated at the same time, the Commission shall cause to be published in the Gazette or in such other manner as the Commission may deem appropriate, a notice advising potential complainants of the decision and inviting them to lodge claims within a period specified in such notice.

The summons shall be in the form to be determined by the Commission and shall include—

- a) the names and address of the parties;
- b) a statement of the purpose of the hearing;

- c) a summary of the complaint and reason for calling the party;
- d) Statement that where the party notified twice and does not attend and participate in the hearing, the Panel may proceed in their absence and the party shall not be entitled to any further notice in the proceedings;
- e) the date, place and time of the hearing;
- f) a notice that a party may appear in person or with an advocate, representative or intermediary;
- g) the documents, reports or objects or information that they should supply; and
- h) the penalty for non-compliance as per Section 35 of the National Land Commission Act, 2012;
- i) Any other information or direction that the Panel considers necessary for the proper conduct of the hearing.

Upon fixing a hearing notice, summons should be served at least 14 days before the hearing date. The Commission or court process server will prepare and file a return of service. Where there is no certified process server service may be effected through a court process server who will be accompanied by an officer from the National Government Administration. Proof of service shall form part of the record.

Where a party to a complaint has been duly served and fails to appear as required, the hearing panel may proceed to hear the respondent and make orders in default of appearance as it may deem fit. If, on the day fixed for the hearing of a complaint, the respondent appears in answer to the summons but the complainant does not appear, or *vice-versa*, the hearing panel may, if satisfied that a hearing notice was duly served, proceed to dispense with the complaint on the basis of the evidence before it. In the event of non-appearance, the party in default may

move the Commission to set aside the decision and reinstate the complaint subject to satisfying the Commission that there were satisfactory grounds and reasons for non- attendance at the hearing. The hearing panel may, upon consideration of the motion under paragraph (3), set aside the decision and fix a new date for the hearing of the complaint with notice to both parties, and upon such terms and conditions as it deems fit.

A requirement to produce a statement stored in electronic form is a requirement to reduce the record into a hard copy and produce it or if specifically required, produce a copy of the record in electronic form. A person may be summoned to provide explanation or information within his knowledge with respect to such records whether they were produced by him or not. A requirement to produce may include a requirement to attend personally to provide explanation and information.

The following procedures shall guide the panel during the hearing:

- (1) Despite the provisions of these Guide, a hearing panel may adopt a suitable procedure for the purpose of resolving the matter while avoiding unnecessary legal technicalities and formalities. According to Section (6) (3) (a) (b) and (c) of the NLC Act, the commission shall inform itself in such a manner as it may consider necessary, may receive both oral and written statements and is not bound by strict rules of evidence
- (2) The language to be used during a hearing shall be Kiswahili, English or sign language or where appropriate other languages approved by the Panel and understood by the claimants and witnesses. The Panel shall, taking into account all the circumstances, provide competent interpreters for spoken or sign language, as the case may be, for parties or witnesses appearing before it.

- (3) Hearings shall be open to the public unless the panel otherwise decides.
- (4) Without prejudice to subsection (4), such a hearing may be attended by –
 - i. Parties and their representatives
 - ii. Witnesses
 - iii. Such other persons as the Panel may consider appropriate
- (5) Persons likely to be prejudiced, or affected shall be given an opportunity to appear in person or via an advocate. The panel shall make decisions of document confidentiality as is necessary.
- (6) Parties can appear physically or virtually or through a transparent hybrid coordinated procedure.
- (7) The Panel may give directions on how materials presented under subsection (c) may be accessed by the parties.
- (8) The Panel on its own motion or upon substantive reasons, may adjourn a hearing to another date.
- (9) The parties shall be heard in such order as the hearing panel shall determine and shall be entitled to give evidence, call witnesses, question any witnesses and address the hearing panel both on the evidence and generally on the subject matter of the complaint.
- (10) The panel may, at any time, put questions to either party or any witnesses and may, at its discretion, call such additional evidence or expert testimony as it considers necessary.
- (11) The panel shall enter an appropriate recommendations on further processing on all or some of the issue and on part or all of the complaint as necessary

- (12) The panel may, for sufficient reason, at any time before or after the beginning of the hearing, adjourn the proceedings and in every such case the Commission shall fix a date for further hearing of the complaint.
- (13) In the course of the proceedings, the hearing panel may make such preservatory or interim orders, as it may deem fit and just in the circumstances.
- (14) Evidence before the hearing panel may be given orally, or if the hearing panel so orders, by affidavit or written statement, but the panel will at any stage before deliberations require response by the opposing and all other interested parties. The panel may also summon deponents of the said statements and makers of any submitted documents to attend as is necessary.
- (15) At any hearing, the panel may, if it is satisfied that it is just and reasonable to do so with no resulting prejudice to the respondent, permit a party to rely on grounds not stated in his complaint, or as the case may be, his reply, and adduce any evidence not initially presented to the Commission.
- (16) Evidence before the panel shall be given on oath or affirmation and for that purpose, the hearing panel shall administer such oath or affirmation.
- (17) The evidence of the parties and that of each witness shall be recorded by the designated secretary of the hearing panel or by any person authorized to do so by the panel and the minutes and all statements shall be confirmed and signed by all the attendees and parties as applicable
- (18) A party can appear in person or be represented by an advocate who appears for a party at any stage and who shall thereafter be deemed to be that party's advocate throughout the proceedings unless—

- a) the party to the complaint files a written revocation of the advocate's authority with the Commission; or
 - b) the advocate files a written notice of withdrawal from the matter with the Commission.
- (19) The Panel may, at any stage of the proceeding and before completion of the hearing, make orders for –
- a) Exchange of certified documents between the parties;
 - b) The exchange of witness statements;
 - c) The filing of reports of expert witnesses; and any other form of disclosure
- (20) All the steps of the proceedings shall be recorded in minutes. Where the proceedings are virtual, the audio record and transcript together with minutes must form part of the record. In as much as it is possible, the panel shall endeavor to record physical or hybrid proceedings and ensure the audio record, and the transcript together with the written minutes form part of the record.

3.6.4 Employ ADR Process

At later evaluation stage, the panel will assess the Legal Officer's identification and justification of the most appropriate resolution process for resolving some or all of the issues of the dispute. The Legal Officer may have differed the identification of the evaluation process to the panel. The panel may detect at the hearing the need to resolve some of the issues of the dispute through a certain ADR process. There are cases before the court where the court appoints NLC as the facilitator of an ADR process in a way predetermined by a court order or subject to the choice of the panel. The panel will proceed to schedule a pre-conference meeting with all the affected parties and relevant stakeholders where the identification of the resolution process has not been determined. The identification of the resolution process can also be determined at the hearing.

At the pre-conference meeting, the panel shall be led by the factors that shall lead the Legal Officers in making the same considerations at the preliminary evaluation stage (See 3.4). The panel will also further distil the following:

- a) Related issues and interests, rights and positions of the parties
- b) If there are other affected parties or interested stakeholders that might affect the outcome. If there are, they will also need to be consulted on their interest in the ADR
- c) The ongoing dynamics of the matter and its history and how that can affect the ADR process
- d) The underlying causes of the dispute and consequences of non-resolution
- e) If there are other resolution steps or mechanisms that have taken place or are already in progress. The matter might have been subject to a taskforce review or AJS process or it might be referred by a court with or without conditions to NLC for facilitation of an ADR process
- f) If there are deadlines relating to the issues in dispute that might impact on the ADR options.
- g) If the matter before it needs litigation to obtain binding precedence of a grey area. In that case, ADR will not be considered but NLC will institute suit upon conferring with interested parties and experts

Once the panel determines the matter is suitable for a certain ADR process (See Article 252, COK, and definition of terms and 3.4 on the advantages and differences of available ADR processes), it will recommend it to the parties or one of the parties will propose it. The parties may opt to have NLC as the facilitator of a neutral evaluation process or the court may have

ordered it to be. If both parties are willing to pursue a certain ADR process, the panel will proceed to discuss the following with the parties and identified stakeholders:

- a) Agreed upon rules, process expectations and communication protocols for the necessary discussions
- b) Possible obstacles of the chosen process and best strategies to address them
- c) The agreed upon ADR process for some or all of the issues and how to resolve any other issues of the dispute
- d) Whether the panel or its member will lead the ADR process on their own or with a coopted expert or other stakeholders or whether an independent ADR provider will be required at a certain stage of the process
- e) Any required information required for a successful process and how it will be corrected
- f) Resources and provision of the same required for an end to end success of the resolution process
- g) A process to secure each party's commitment to participate and implement the settlement process
- h) Except where a road map has been provided by a court order, the panel will discuss with the parties the options open to them to make a decision on the way forward. The panel will explain to the parties the benefits of a particular ADR process suitable to the case.

CHAPTER FOUR:

THE INVESTIGATION REPORT AND ADOPTION

4.1 Investigation Report

Upon conclusion of the investigation process, a final investigation report shall be prepared by the allocated officer under the supervision of the Legal Director or Head of HLI within (14) fourteen days. The report shall be written with clarity and accuracy to ensure that the person for whom it is intended shall understand all the facts presented, including documents received, interviews conducted, records obtained, relevant statements made by the interviewees, site observations and procured planning and/survey documents.

The primary purpose of the investigation report is to inform the Commission's decision on the matter at hand and document investigative process. It provides the internal or external decision maker with a set of findings and represents in a written form what the investigator set out to accomplish, the factual findings of the investigator and statement of conclusions drawn from the investigation. The report sets out to accomplish one or several of the objectives highlighted in the introduction of this guide.

The investigation report submitted to the panel shall be in writing and shall contain—

a) The complaint

The Complaint shall contain a statement of claim, full names and capacity of the Complainant, land reference number/parcel number, brief facts leading to the Complaint, summary of the response to the Complaint.

b) The complainant

The Panel will consider the capacity of the Complainant based on the law. Pursuant to Article 252(2) of the Constitution as read together with Article 22(1) and (2) of the Constitution, any person may lodge a complaint before the Commission claiming that a right or fundamental freedom has been denied, violated, infringed or is threatened, either on his own behalf or on behalf of another person who cannot act in their own name or in the interest of a group, class of persons, public interest or an association acting in the interest of one or all of its members

c) Jurisdiction

Pursuant to Article 67(2) as read together with Article 252(1) of the Constitution and Section 6 of the National Land Commission Act, the Commission has jurisdiction to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress.

d) The investigative procedures setting out the chronological summary of the nature, and facts of collected evidence and the manner in which each piece of evidence was collected

The report is a chronological order of dated investigative events including correspondence and documents received, interviews conducted, records obtained, relevant statements made by the interviewees, site observations, planning and survey documents with maps. It shall include documentation of every bit of material evidence obtained from any person, document, records, object, impressions or other item of evidence analysed and the person/s from whom it is collected together with authorization of the collector of the evidence where necessary. Each nature,

validity, process, date(s), documents and participant of an investigative event should be reported. Information of each such event should be specific, clear, precise, factual, grounded and accurate

- e) Distilled issues to be addressed and the evidentiary facts of each of the parties' representation on each issue

The report shall distil issues for determination from the evidence and deal with each issue of evidence as follows:-

- i. evidence and factual findings on Complainant's allegations on the identified issue
 - ii. evidence and factual findings on the Respondent's allegations on the identified issue
 - iii. evidence and factual findings on the each of any interested party's allegations on the identified issue
- f) Analysis of admissible and justifiable evidentiary facts from all the allegations on each of the identified issue

The analysis shall be made in the context of legal, regulatory, policy, administrative practice, jurisprudence and principles of equity in support or denouncement of each distilled issue

- g) Conclusion and recommendation of the Panel

The concluding recommendations to address the issue to the plenary on a certain position or to relevant authorities to remedy an injustice or to address a policy gap

4.2 Commission Recommendation

Upon been satisfied that all requisite information, reports, documents and witness statements as well as all the minutes or transcripts of hearings, neutral evaluation, facilitation and outcomes of any mediation, conciliation and negotiation processes

have been gathered, the panel shall retreat to deliberate and may make any of the following recommendations depending on the purpose of the investigation and inquiry:

1. Recommended Commission position on a contested issue in defense of the constitution and in the course of the implementation of the Commission's land administration and public land management mandate
2. Recommended appropriate redress to the relevant authorities to address present or historical injustices at its own initiative or on a complaint by a member of the public. The recommendation should remedy the injustice, resolve any subsisting dispute and provide sustainable relief.
3. Proposed decision on the interests and rights in land to be compulsorily acquired. The decision shall include conclusive evidence of the size of the land to be acquired, ownership rights, nature of interests, the value of the land and the form of payable compensation.
4. Recommended Commission position in support of defense or institution of suit during court proceedings where issues of allocation, acquisition, public land management or injustice are in issue.
5. Recommendation to adopt the executed ADR process agreement or a recognized local community initiatives to settle a land dispute in line with the constitutional principles of land governance.
6. Recommendation to the appropriate authorities on the best process of sustainable, efficient, effective and equitable land holding, management and use in line with the national land policy and the constitution.

7. Policy recommendation to the appropriate authorities on policy, administrative and regulatory gaps as well as on issues of registration and planning oversight mandates of the Commission.

The hearing panel report shall be submitted with a summary plenary paper together with the committee hearing panel deliberation minutes to plenary. The plenary shall deliberate and either defer the matter back to the committee for further action or adopt the committee panel recommendations with or without amendments.

The final adopted report and recommendations shall be signed by the hearing panel and the adopting commission resolution shall be extracted, authenticated and sealed by the Commission Chairman and attached thereto. The resolution together with the signed hearing panel supporting report shall be served on all the parties and appropriate authorities within (14) fourteen days of its issuance and shall form the file record. The certificate of service and the minutes of plenary and hearing panel shall form part of the record and are proof to establish the commission recommendations and service. The panel may subsequently correct typographical errors without prejudice to the substance of its findings as per the deliberation minutes. The commission shall keep minutes of its decisions and minutes (NLC Act, Fourth Schedule 5 (b))

The Commission shall keep a record of each investigation and may publish the findings and recommendations, pursuant to an investigation, and may include these in its statutory report.

Where the recommendations address a present or historical injustice, the Commission shall cause the recommendations to be adopted as an order of court unless affected parties apply for review within the recommended period.

4.3 Monitoring and Implementation

The Commission is a manager and administrator of public land and has oversight and advisory mandates. It shall monitor and report on the implementation gaps of its recommendations and recommend further redress within six (6) months of the recommendation issuance. The Commission shall take note of the requisite institutional reports (See in Chapter 5) that must be submitted to it to monitor and gives advice on the implementation of its recommendation.

4.4 Review of Procedures

The Commission may from time to time and through its resolutions determine any other ways for the better carrying out of the provisions of these guide. Without prejudice to these guide, any case not covered by these procedures shall be dealt with in accordance with such instructions as the Commission may issue through such resolutions from time to time.

The Commission shall review the investigative procedures annually and in the context of any relevant legal or policy or executive administrative amendments.

CHAPTER FIVE:

REFERRALS AND LIAISON

5.1. Introduction

To successfully execute its investigation and inquiry mandate, NLC has linkages with external stakeholders. Section (6) of NLC Act requires NLC to gather information from various institutions and people to arrive at a recommendation and to advise on matters of the national land policy. Article 67 (2) mandates the commission to make recommendations to the appropriate authorities upon investigating present and historical land injustices. The commission manages land on behalf of the national and the county governments. NLC investigative duties require referral and liaisons with various county and national government institutions in accordance to the said institutions constitutional and legislative functions. NLC legal officers and the inquiry panels must rely on both internal and external expertise to deliver on their mandates.

5.2 Co-opting

Section 16 (2) of the NLC act allows NLC to co-opt into the membership of its committees other persons whose knowledge and skills are necessary for the functions of NLC. A person co-opted into the membership of a committee under may attend the meetings of the Commission and participate in its deliberations but shall have no right to vote at any meeting. NLC may pay persons co-opted to the committees such allowances and other expenses as it may determine from time to time.

5.3 Land Sector Linkages

5.3.1 Land Dispute Tribunal

Section 3(1) of the Land Disputes Tribunal Act CAP 303 A (repealed) provided that:

“Subject to this Act, all cases of a civil nature involving a dispute as to; (a) the division of, or the determination of boundaries to land, including land held in common; (b) a claim to occupy or work land; or(c) trespass to land shall be heard and determined by a Tribunal established under section 4.”

There was a mechanism for appeal established under the Land Disputes Tribunal Act (Repealed)(CAP 303A) that granted a right to an aggrieved party to the Tribunal’s decision to make an appeal within 30 days after delivery of the decision. Section 8(1) stated that:

“Any party to a dispute under section 3 who is aggrieved by the decision of the Tribunal may, within thirty days of the decision, appeal to the Appeals Committee constituted for the Province in which the land which is the subject matter of the dispute is situated.”

If a party was further aggrieved upon appeal, Section 8(8-9) allowed for a further appeal to the High Court on issues of law but not on issues of fact. Under Section 8(8) of the Land Disputes Tribunals Act (Repealed), the decision of the Appeals Committee was deemed to be final on any issue of fact and no appeal was allowed thereof to any Court. However, a party aggrieved by the decision of the Appeals Committee could under Section 8(9) appeal to the High Court on point of Law within sixty (60) days of the decision of the Appeals Committee.

5.3.2. Adjudication committees and Administration boards

They are established under the Land Consolidated Act, Cap 283 (LCA) and the Land Adjudication Act, Cap 284 (LAA). They both deal with ascertainment and registration of rights in land

but differ in the manner and geographical application.

LCA provides for ascertainment of rights and interests in consolidated designated areas and a certificate signed by an adjudication officer operates as conclusive proof that land in an adjudication area is such land (Section 8(4) LCA). Courts are precluded from exercising jurisdiction in matters in which ownership or existence under native custom or law of a right or interest in land located in adjudication area is in dispute without obtaining consent of the Adjudication officer to the institution or before continuance is granted (Section 8(1) LCA)

The committee adjudicates accordance with customary law and if it's unable to reach a decision the matter is referred to the arbitration board which is required to inform committee of its decision (Section 11(2) LCA).

The committee is empowered to record existing rights (section 15,LCA) which upon completion is subject to objection but the Adjudication decisions to dismiss any objections or rectification order or an award of compensation in lieu of rectification is not subject to any appeal. The Resident Magistrate has jurisdiction where amount of compensation is in dispute (section 26(3) LCA)

LAA applies to Trust lands which is now administered under the community land Act,2016. It establishes a committee and an administration board. Right of appeal to a determination of an objection should be within 60 days to the minister whose order is final (section 29(1) LAA) and the minister can delegate his functions to another public office or officer (section 29(4) LAA). No person can institute suit without the written consent of the adjudication officer and the court is precluded from hearing any civil matters pertaining to land in an adjudication area until the adjudication register is finalized (section 30(1) LAA). Subject to the jurisdiction of the adjudication officer, courts are required to stay proceedings if the matter commenced before establishing the adjudication section.

5.3.3 Chief Registrar

Section 105 (c) of the LRA No. 3 of 2012 provides that in the case of an interest in land previously under the repealed Government Lands Act and the repealed Land Titles Act then the register or folio maintained under the repealed Government Lands Act and the repealed Land Titles Act in respect of the interest in land shall be deemed to be the register under the LRA. Section 105 (3) of LRA further clarifies that for the avoidance of doubt any rights, liabilities and remedies shall be exercisable and enforceable in accordance with the law that was applicable to the parcel immediately before the registration of the land under this Act. Section 107 of LRA further provides that unless it is otherwise provided under the RTA, the law applicable immediately prior to the commencement of the RTA shall continue to be applicable in relation to rights, interests, titles, powers or obligations that were acquired, accrued, established, came into force, were exercisable or that are in the course of such processes.

In particular, any lease granted to a noncitizen shall not exceed ninety-nine years and the question whether any instrument so presented is to be registered shall be determined by the Registrar by reference to the law in force at the time of its execution. This makes Section 43 (1) of the Land Titles Act (Repealed) applicable through evidence from facts of adduced documents in the context of the registration records. The section provides for offences and avoidance of fraudulent activities of the records between all parties or persons privy to the fraud if any person was involved in the following:

“(a) fraudulently or falsely makes or assists in making a false or fraudulent claim, declaration or application under this Act, or

is privy to the false or fraudulent making of any such claim, declaration or application, or gives or procures the giving or is privy to the giving of false evidence in respect of any claim to any right, title, estate or interest in immovable property under this Act, or fraudulently procures or assists in fraudulently procuring or is privy to the fraudulently procuring of any certificate of title or other instrument or any entry in the register or any erasure or alteration in any entry in the register or in any instrument or form issued by the Recorder of Titles;

- (b) fraudulently uses, assists in fraudulently using or is privy to the fraudulent using of any form purporting to be issued by the Recorder of Titles;*
- (c) Knowingly misleads or deceives any person hereinbefore authorized to demand explanation or information in respect of immovable property which is the subject of a claim under this Act;*
- (d) wilfully damages, removes, defaces, covers up, renders useless, invisible or irrerecognizable or in any way whatsoever tampers or deals with boundary marks of any description provided for in this Act, or causes or procures or is privy to the causing or procuring of the damaging, removing, defacing, covering up or rendering useless, invisible or irrerecognizable or in any way whatsoever tampering or dealing with any boundary marks, without the lawful order in writing of an officer duly authorized in that behalf..”*

Section 60–61 of the Registration of Titles Act (repealed) provides legal perimeters within which the cancellation of titles can be exercised by the registrar. Under section 60, the registrar has the power to rectify titles where there were wrongful or fraudulent entries. The registrar has the power to cancel title when directed by court under section 64 of RTA (*Kuria Greens limited v Registrar of Titles and another* [2011] eKLR (Nairobi High Court)

Section 80 of the land registration Act provides for the rectification of the register by order of court. The court may order the rectification of the register by directing cancellation or amendment if it is satisfied that the registration was obtained, made or omitted by omissions or fraud or mistake if the proprietor had knowledge or caused the fraud or omission or mistake. Pursuant to section 2, LRA courts with jurisdiction to cancel title include courts with jurisdiction on matters relating to land which include magistrate courts.

The registrars are the custodian of land documents and are tasked with the maintenance of land registries and other documents required under the LRA allowing for public access to the information contained therein (Section 9;7 (1), (2) and 10 LRA). They are also responsible for issuance of certificates of title under the LRA (Section 26 (1)), LRA, Article 63 as read with the Community Land Act 2016 and section 8 (2) and (3) of LRA). The register may also register public rights of way subject to compensation (sections 147 and 148 of the LLA)

LRA gives all registrar the powers to: produce certificates or other documents related to land; summon individuals to give information or explanation in respect to land, leases or charges; refuse to proceed with the registration of documents; verify information on registration by oath; order payment of investigation cost. (Section 7 of LRA)

The Chief Land Registrar is obliged to supervise the registries and set their standards. He is also obliged to prepare and submit an annual report on the state of land registration to the Commission and the CS. He hears and determines appeals from the registries and carries functions as may be prescribed under any written law. (Section 14 (2) as amended by s 8 LLA). The commission gives advice on the comprehensive registration of land rights based on its investigations as well as the submissions of the Chief Registrar.

5.3.4 Director of Surveys

The Director of Surveys maintains survey plans and records deposited by land surveyors which become government property. (Section 30, Survey Act). Sections 30 to 33 of the Survey Act provide for the role of the Director of Surveys in relation to survey plans and records. All plans, field notes and computations relating thereto, and all such plans, field notes and computations shall be deposited in the Survey Office and shall become the property of the Government.

The Director, or a Government surveyor duly authorized to authenticate a plan under section 32 of the survey Act may by notice in writing, instruct any licensed surveyor to correct at his own expense within a time specified in such notice any error made by him in the survey represented by the plan submitted for authentication. The Director, or a Government surveyor authorized in writing by the Director in that behalf, may at any time undertake such field and office checks on the survey work of a licensed surveyor as he thinks fit.

No land shall be deemed to have been surveyed or resurveyed until the plan thereof has been authenticated by the signature of the Director or of a Government surveyor authorized in writing by the Director in that behalf, or by the affixing of the seal of the Survey of Kenya.

Pursuant to section 33 of the Survey Act, the Director may cancel the authentication of such plan in accordance to section 31 of the survey act and may recall any copies which may have been issued. He may do so where, before a document or instrument to which an authenticated plan is attached, or in which reference to such a plan is made or registered is found to be inaccurate by reason of any error or omission in the survey. He may also do so where the plan does not conform with the terms and conditions subject to which permission to subdivide the land to which the plan relates has been given.

The Director shall forthwith upon the cancellation of the authentication of any plan notify the registered owner of the land to which such plan relates or, in the case of Government land, the Commission. He shall also notify the surveyor by whom the survey was executed, the relevant registrar as provided under section 33 of the Survey Act.

The Director chairs the Land surveyors board whose duties include taking disciplinary action against licensed surveyors, determining disputes between the Director of surveyor and licensed surveyors and advising the Director on cadastral surveys in connection with the registration of land or title in land (Section 9(a) –(g) of the Survey Act)

In order to contact a survey, the Director has powers to: enter upon land to make or supervise any survey or resurvey; affix or set up any survey mark; inspect survey marks; alter., repair, move or remove any survey marks; perform any act that is necessary for carrying out his functions; examine or inspect the conduct of any survey. (Section 23 (1) (a) – (f) Survey Act. The Director is also mandated to cause registration sections or blocks to be combined or divided or cause their boundaries to be varied and inform the Land registrar (Section 6 (4), LRA)

The office or the authority responsible for survey of land is further required to submit to NLC a copy of cadastral maps with the NLC acting as the depository for such maps (section 17 (3), LRA).

5.3.5 Director General of Physical and Land Use Planning

The roles of the Director of physical planning under the Physical Planning Act (Cap 286) (Repealed) Section 5 include, among others, preparation of all regional and local physical development plans, advising NLC on matters concerning alienation of land under the Government Lands Act and the Trust Land Act respectively. They also include advising NLC and counties on

the most appropriate use of land including land management such as change of user, extension of user, extension of leases, subdivision of land and amalgamation of land. The director is also tasked to ensure local authorities conform to the proper execution of physical development control and preservation orders.

The roles of the Director-General of physical and land use planning is provided under section 13 (a) – (g) of the Physical and Land Use Planning Act and include the following:

- Advising the government on strategic physical and land use planning matters that impact the whole country
- Formulating national physical and land use planning policies, guidelines and standards
- Preparation of national physical and land use development plans
- Coordination of the preparation of inter-county physical and land use development plans
- Preparation of development plans for strategic national installations and projects

The roles of the County Director of Physical and Land Use Planning is provided under section 20 of PLUPA and include the following:

- advising the county government on physical and land use planning matters that impact the county
- formulating county physical and land use planning policies, guidelines and standards
- preparation of county physical and land use development plans
- preparation- of local physical and land use development plans

- participating in the preparation of inter-county physical and land use development plans;
- Maintaining land information system to guide physical use planning
- Issuing of development permission and other development control instruments

The National Physical and Land Use Planning Liaison Committee is established under Sections 73 and 74 of PLUPA and its functions under section 75 of PLUPA include hearing and determining appeals under this Act or as may be provided for under any other written law. It also hears appeals against decisions made by the national planning authority including decisions on— (a) the development of major infrastructure facilities; (b) the reserving of public land for public projects; (c) the implementation of national or inter-county physical and land use development plans; or (d) the environmental impacts on ecologically sensitive areas by the implementation of strategic projects.

The County Physical and Land Use Planning Liaison Committee is established under sections 76 and 77 of PLUPA and has the following functions under section 78 of PLUPA: a) hear and determine complaints and claims made in respect to applications submitted to the planning authority in the county; (b) hear appeals against decisions made by the planning authority with respect to physical and land use development plans in the county; (c) advise the County Executive Committee Member on broad physical and land use planning policies, strategies and standards; and (d) hear appeals with respect to enforcement notices.

5.3.6 Community Land Act Mechanisms

Community, under the Community Land Act, means a consciously distinct and organized group of users of community land who are citizens of Kenya and share any of the following

attributes; (a) common ancestry; (b) similar culture or unique mode of livelihood; (c) socio-economic or other similar common interest; (d) geographical space; (e) ecological space; or (f) ethnicity.

Section 39 of the Community Land Act provides for ways through which a registered community may resolve disputes. It will use alternative methods of dispute resolution mechanisms including traditional dispute and conflict resolution mechanisms where it is appropriate to do so, for purposes of settling disputes and conflicts involving community land. Any dispute arising between members of a registered community, a registered community and another registered community shall, at first instance, be resolved using any of the internal dispute resolution mechanisms set out in the respective community by-laws. Where a dispute or conflict relating to community land arises, the registered community shall give priority to alternative methods of dispute resolution. Subject to the provisions of the Constitution and of the community land Act, a court or NLC shall apply the customary law prevailing in the area of jurisdiction of the parties to a dispute or binding on the parties to a dispute in settlement of community land disputes so far as it is not repugnant to justice and morality and inconsistent with the Constitution.

Section 40 of the Community land act provides that where a dispute relating to community land mediation arises, the parties to the dispute may agree to refer the dispute to mediation. The mediation shall take place in private or in informal setting where the parties participate in the negotiation and design the format of the settlement agreement. The mediator shall have the power to bring together persons to a dispute and settle the dispute by convening meetings for the hearing of disputes from parties, keeping record of the proceedings, establishing ground rules for the conduct of parties, structuring, managing the negotiation process and helping to clarify the facts and issues. When an agreement is reached during the mediation process,

the agreement shall be reduced into writing and signed by the parties at the conclusion of the mediation.

Section 41 provides for where a dispute relating to community land Arbitration' arises. The parties to the dispute may agree to refer the dispute to arbitration. Where the parties to an arbitration agreement fail to agree on the appointment of an arbitrator or arbitrators, the provisions of the" Arbitration Act relating to the appointment of arbitrators shall apply.

Under section 42, where all efforts of resolving a dispute under the Community land Act fail a party to the dispute may refer the matter to court. The Court may confirm, set aside, amend or review the decision which is the subject of the appeal; or (b) make any order in connection therewith as it may deem fit.

5.4 National and County Governments

5.4.1 Local Government

Section 144 of the Local Government act, Cap 265 (Repealed) provided the ways through which municipalities dealt with land. A local authority could, for the purpose of any of its functions under this or any other written law, by agreement acquire, whether by way of purchase, lease, exchange or gift, any land, whether situated within or without the area of the local authority, notwithstanding that the land is not immediately required for that purpose. Where land was so acquired but was not immediately required for the acquired purpose, it could be held and used for the purpose of any other functions of the local authority upon the approval of the minister. The appropriation for other use of land by a local authority would be subject to any covenant or restriction affecting the use of the land. A local authority could let, or grant to any person a license to occupy, any of its land with the consent of the Minister for any term or without the consent of the Minister, unless such consent was required by any written law, for a term not exceeding seven years

and could in respect thereof charge rents . The local authority could charge premium or fees. The local authority could sell any of its land when it was not required for the purpose for which it was acquired or exchange it

Section 134 of the Local Government Act, Cap 265 (Repealed) provided that all issues that may arise as a consequence of the repeal would be dealt with and discharged by the body responsible for matters relating to transition. An Authority was set up under Section 7 of the Transition to Devolved Government Act (TDG) to facilitate and co-ordinate the transition to the devolved system of government as provided under section 15 of the Sixth Schedule to the Constitution. Its responsibilities that are ongoing include the following:

- facilitate the analysis and the phased transfer of the functions provided under the Fourth Schedule of the Constitution to the national and county governments;
- make recommendations for the effective management of assets of the national and county governments;
- provide mechanisms for the transfer of assets which may include vetting the transfer of assets during the transitional period;
- pursuant to section 15 (2) (b) of the Sixth Schedule to the Constitution, develop the criteria as may be necessary to determine the transfer of functions from the national to county governments, including the criteria to determine the transfer of previously shared assets, liabilities and staff of the government and local authorities

The transferred assets include land and properties that must constitute the National land commission inventory as managers of public land. Section 35 of the Transition to Devolved Government Act had imposed a moratorium against all State organs, public offices, public entities or local authorities transfer

of assets during the transition period between commencement of the TDG Act and three years after the first elections under the Constitution. Any transfers had to be made transfer with the approval of the Authority, in consultation with the National Treasury, the Commission on Revenue Allocation, the Ministry of Local Government and the Ministry of Lands. Contravention of the process of transfer would mean that the same is invalid.

5.4.2 Devolved Functions

To determine the public ownership of institutional land by the county and the national government as well as the devolved functions, refer to the second schedule of this guide. The same is pursuant to the Fourth schedule of the constitution and in accordance to Articles 185, 186 and 187 of the constitution.

The County Government Act number 17 of 2020 sets out the functions and powers of counties. Planning mandate of the county is, among other reasons, meant to facilitate the development of a well-balanced system of settlements and ensure productive use of scarce land, water and other resources for economic, social, ecological and other functions across a county

The following are land and environment related devolved functions set out in the fourth schedule: agriculture and fisheries, county health services, control of pollution, county transport, trade development including tourism, county planning and development, including statistics, land survey and mapping, boundaries and fencing, housing and electricity and energy regulation; Implementation of specific national government policies on natural resources and environmental conservation, including soil and water conservation and forestry; County public works and services, including storm water management systems in built-up areas, water and sanitation services.

Article 189 of the constitution provides for the cooperation between county and national government. Government at

each level, and different governments at the county level, shall co-operate in the performance of functions and exercise of powers and, for that purpose, may set up joint committees and joint authorities. In any dispute between governments, the governments shall make every reasonable effort to settle the dispute, including by means of procedures provided under national legislation. Section 31 of the IGRTC Act provides that the national and county governments shall take all reasonable measures to— (a) resolve disputes amicably; and (b) apply and exhaust the mechanisms for alternative dispute resolution provided under this Act or any other legislation before resorting to judicial proceedings as contemplated by Article 189(3) and (4) of the Constitution. Mediation and arbitration are provided under the act as means of resolving the disputes before initiating judicial proceedings. Within 21 days of identification of a dispute, the relevant government structure under the IGRTC act shall identify the issues of the disputes and the process of resolving it.

The new constitution states that any unregistered community land is to be held in trust by county governments on behalf of the communities for which it is held. The Constitution defines community land to comprise: land lawfully registered in the name of group representatives under the provisions of any law; land lawfully transferred to a specific community by any process of law; any other land declared to be community land by an Act of Parliament; land that is lawfully held, managed or used by specific communities as community forests, grazing areas or shrines; ancestral lands and lands traditionally occupied by hunter-gatherer communities; and land that is lawfully held as trust land by the county governments. The constitution also predicates any disposition or use of community land on legislation specifying the nature and extent of the rights of members of each community individually and collectively.

5.4.3 Intergovernmental Relations Structures

Inter-Governmental relations structures are established under the Inter-Governmental Relations Act, 2012 (No. 2 of 2012). They include the National and County Government Co-ordinating Summit, Intergovernmental Relations Technical Committee and the Council of County Governors.

The summit is established under section 7 of the IGR Act and provides a forum for: the consultation and co-operation between the national and county governments; promotion of national values and principles of governance; promotion of national cohesion and unity; consideration and promotion of matters of national interest; evaluation of the performance of national or county governments and recommending appropriate action; consideration of issues relating to intergovernmental relations referred to the Summit by a member of the public and recommendation of measures to be undertaken by the respective county government; co-ordination and harmonization of the development of county and national governments policies;

Facilitation and co-ordination of the transfer of functions, power or competencies from and to either level of government

The council's functions are set out under section 20 of the IGR Act and include: consultation amongst county government; promotion of best practice ;dispute resolution between counties; facilitating capacity building for governors; monitoring the implementation of inter-county agreements on inter-county projects; consideration of matters referred to the Council by a member of the public; consideration of reports from other intergovernmental forums on matters affecting national and county interests or relating to the performance of counties.

The technical committee is established under section 11 of the IGR Act and is responsible for the day to day administration of the Summit and of the Council and it facilitates the activities

of the Summit and of the Council; implements the decisions of the Summit and of the Council; handles transition to devolved government.

Under section 23 of the IGR Act, the national or a county government may establish a joint committee with a specific mandate where such a committee is necessary for the achievement of the objects and principles of devolution provided in Articles 174 and 175 of the Constitution.

Whenever there is a dispute between the national government and a county government or amongst county governments, the national and county governments shall take all reasonable measures to resolve disputes amicably and to apply and exhaust the mechanisms for alternative dispute resolution, as contemplated by Article 189(3) and (4) of the Constitution and as provided for under the IGR Act or any other legislation before resorting to judicial proceedings.

Section 32 of the IGR Act provides inclusion of an appropriate dispute resolution mechanism into any agreement between the national government and a county government or amongst county governments and judicial proceedings shall be the last resort. Where there is no such provision in an agreement, any dispute arising shall be dealt with within the framework provided under IGR Act.

Under section 33 of IGR Act, parties to a dispute shall make every reasonable effort and take all necessary steps to amicably resolve the matter by initiating direct negotiations with each other or through an intermediary. Where the negotiations fail, a party to the dispute may formally declare a dispute by referring the matter to the Summit, the Council or any other intergovernmental structure established under the Act, as may be appropriate. After formal declaration of a dispute and within twenty-one days of the formal declaration of a dispute, the relevant intergovernmental structure shall convene a meeting inviting the parties or their

designated representatives to: determine the nature of the dispute, including the precise issues in dispute and any material issues which are not in dispute; identify the mechanisms or procedures that are available to the parties to assist in settling the dispute, including a mechanism or procedure provided for in the Act, other legislation or in an agreement, if any, between the parties; agree on an appropriate mechanism or procedure for resolving the dispute including mediation or arbitration;

Where a dispute referred to the Council or any other intergovernmental structure established under this Act, fails to be resolved the Summit shall convene a meeting between the parties in an effort to resolve the dispute and may recommend an appropriate course of action for the resolution of the dispute.

Under section 35 of the Act where all efforts of resolving a dispute under this Act fail, a party to the dispute may submit the matter for arbitration or institute judicial proceedings.

Under section 36 of the IGR Act, a person commits an offence if he fails, without justifiable cause, to attend a meeting for settling a dispute when required to; refuses to produce any article or document when lawfully required to do so; knowingly gives false evidence or information; interrupts any proceedings of the meeting.

5.4.4 Office of the Attorney General

Article 156 of the Constitution of Kenya 2010 and the Office of the Attorney General Act 2012 establishes the Office of the Attorney General.

Executive Order No 1 of 2023 refers to the Office of Attorney General and Department of Justice as State Law Office.

The Attorney General is the Government's principal legal advisor, responsible for representing the national Government in court or any other legal proceedings to which the national

Government is a party (other than criminal proceedings) and for performing any other functions conferred to the Office by an Act of Parliament or by the President;

The AG discharges the functions of a Cabinet Secretary in relation to the Department of Justice and therefore he is responsible for the promotion of human rights and implementation of the Constitution, access to justice including through, among other ways, the promotion of legal aid, good governance, anti-corruption strategies, ethics and integrity, legal education and law reforms

The AG represents the national Government in court or in any other legal proceedings to which the national Government is a party undertaking civil litigation, arbitration, and alternative dispute resolution on behalf of the Government

5.4.5 National Government Administrative Offices

National Government Co-ordination Act No. 1 of 2013 gives effect to Articles 131(1) (b) and 132 (3) (b) of the Constitution and establishes the offices of the national government administrative officers. The officers are appointed under Section 15 of the NGAO Act. They are responsible for the co-ordination of national government functions at the county level and other decentralized units subject to the Constitution, NGAO Act or any other written law,

Pursuant to Section 19 (1) of the NGAO Act, where a dispute arises as to the mandate or powers of any of the officers, or roles of respective officers of the county governments and those of the national Government, a mediation team shall be constituted to deal with the dispute. The mediation team shall consist of two eminent persons appointed by the Governor and two eminent persons appointed by the Cabinet Secretary for the time being responsible for national government co-ordination. The mediation team shall be guided by the constitutional principles

and the respective constitutional mandates of each respective government. The mediation team shall undertake and finalize its task within a period of fourteen days. Should the mediation team fail to resolve the dispute within the stipulated time, the matter may be referred to the Summit under the Inter-Governmental Relations Act, 2012 (No. 2 of 2012) for resolution.

5.4.6 The National Environment Management Authority

The National Environment Management Authority (NEMA), is established under the Environmental Management and Co-ordination Act No. 8 of 1999 (EMCA) as the principal instrument of Government for the implementation of all policies relating to environment.

Section 9(i) of EMCA mandates the Authority to exercise general supervision and coordination over all matters relating to the environment and to be the principal instrument of the Government of Kenya in the implementation of all policies relating to the environment.

Section 9 (2) tasks NEMA with the following functions:

- co-ordinating of the various environmental management activities being undertaken by the lead agencies and promotion of the integration of environmental considerations into development policies, plans, programmes and projects with a view to ensuring the proper environmental resource management for the improvement of the quality of human life in Kenya;
- taking stock of the natural resources in Kenya and their utilisation and conservation;
- auditing and determining the net worth or value of the natural resources in Kenya and their utilization and conservation;
- making recommendations to the relevant authorities with respect to land use planning;

- examining land use patterns to determine their impact on the quality and quantity of natural resources;
- advising the Government on legislative and the party membership on as well as implementation of relevant international conventions, treaties and agreements in environmental management issues.
- undertaking research, investigation and surveys on environmental issues to collect, collate and disseminate findings
- mobilizing and monitoring the use of financial and human resources for environmental management;
- identifying projects, plans and policies for which environmental audit or environmental monitoring must be conducted under EMCA Act;
- Developing procedures and safeguards for the prevention of accidents which may cause environmental degradation and evolving remedial measures where accidents occur;
- monitoring and assessing activities, including activities being carried out by relevant lead agencies, in order to ensure that the environment is not degraded by such activities and giving early warning on impending environmental emergencies
- undertaking, in co-operation with relevant lead agencies such as NLC programmes intended to enhance environmental education, public awareness and public participation;
- developing, publishing and disseminating manuals, codes or guidelines relating to environmental management and prevention of environmental degradation;
- rendering advice and technical support to entities such as NLC that are engaged in natural resources management and environmental protection;
- preparing and submitting to the Cabinet Secretary a report on the state of the environment in Kenya

- encouraging voluntary environmental conservation practices and natural resource conservancies, easements, leases and payments for ecosystem services
- working with other lead agencies to issue guidelines and prescribe measures to achieve and maintain a tree cover of at least ten per cent of the land area of Kenya;

In *Martin Osano Rabera & Another v Municipal Council of Nakuru & 2 others* [2018] eKLR, the court stated that NEMA was not just an investigator and prosecutor whose success is measured in terms of successful investigations and prosecutions. In addition to being the related principal instrument of government, it has a bigger mandate towards the people of Kenya in the implementation of all policies relating to the environment.

5.5 Judiciary and Tribunals

5.5.1 Judiciary

Section 20 of the ELC court provides that nothing in the act precludes the court from adopting and implementing, on its own motion, with the agreement or at the request of the parties, any appropriate means of alternative dispute resolution including conciliation, mediation and traditional dispute resolution mechanisms in accordance to Article 159 (2) (c) of the Constitution. This is affirmed by Order 46 Rule 20 (1), CPR, Sections 59B and 59D, CPA. The provision is further made in Paragraphs 38 and 39 of Practice and Directions on Proceedings in the Environment and the use and Occupation of and Title to Land and Proceedings in other Courts.). The position was confirmed in the case of *Anderson Nyamau and Another v Wycliff Nyamau Anchingá* [2018]eKLR (Kissi ELC). Courts cannot compel parties to subject themselves to the jurisdiction of other mechanisms (*Mchabari Kinoro v Isaiah Nkoroi Muruingi and 5 others* [2018] eKLR (Chukka ELC)).

Article 159 (2) (c) lists promotion of alternative forms of dispute resolution including reconciliation, mediation and traditional dispute resolution mechanisms as a judiciary principle of courts and tribunals. Traditional dispute resolution mechanisms shall not be used in a way that contravenes the bills of rights, is repugnant to justice and morality or results in outcomes that are repugnant to justice or morality or is inconsistency with the constitution or any other written law

Where parties at any time of the suit reach a compromise or intimate an out of court settlement, they are required to file a consent signed by all parties to be approved and adopted by court and if no settlement is reached, the matter is set down for hearing (Paragraph 35 of the Practice Directions on Proceedings in the Environment and the use and Occupation of, and Title to Land and Proceedings in other Courts.) The Court of Appeal has reiterated that consent orders or judgments have contractual effect and can only be set aside on justifiable grounds for setting aside a contract or if certain conditions remain unfulfilled or not carried out (*Flora N. Wasike v Destimo Wamboko* [1988] eKLR (Kisumu Court of Appeal))

Pursuant to section 59 (c) as read with Section 3 of the CPA, any settlement arising from a suit referred to any alternative dispute resolution method by the court for agreement of the parties shall be enforceable as a judgment of the court. Where an ADR mechanism is a condition precedent to any proceedings before ELC, the court is required to stay proceedings until such a condition is fulfilled (Section 20 (2), ELC Act). The ELC court has concluded that there is no conflict between the conferment of judicial power to adjudicate over disputes before a judicial authority and the requirement of the judicial authority to promote ADR. Promoting ADR does not oust or abdicate the jurisdiction of the court notwithstanding there are no provisions on ADR in order 42 of CPR. The entire ADR process applies to the entire dispute resolution including the appellate process.

(Samson Muriithi Kirinyanga Dairy Farmers Co-op Society Ltd and Another [2017] eKLR (Embu ELC).

EMCA establishes both civil and criminal jurisdiction to be exercised by the courts. Offences are created in relation to interference with environment inspections (section 137, EMCA); failure to comply with EIA requirements (section 138, EMCA); offences related to environment records (section 140); management of hazardous wastes, materials, chemicals, chemicals and radioactive substances (s 141); polluting activities (section 142). Penalties include fines, imprisonment and forfeitures.

ELC has jurisdiction to hear and determine disputes pursuant to Article 70 of the constitution alleging that a person has acted in a manner that has or is likely to adversely affect efforts towards mitigation and adaptation to the effects of climate change (section 23 (1), Climate Change Act). The ELC can give orders such as prevention or discontinuance of the deleterious act or omission or compensatory orders for violation of climate change duties (section 23 (2), Climate Change Act).

Redress for violation of right to clean and healthy environment lies with ELC which is empowered to grant remedies including orders such as: to prevent or discontinue deleterious activities, mandatory orders to public officers to take necessary measures or prevent deleterious acts or omissions; orders requiring an environment audit; restoration orders and orders for compensation (Section 3 (3), EMCA).

Court users committees are established pursuant to Section 34 of the Judicial Services Act which establishes the National Council on administration of Justice. The mandate of creating the Court users committee is to ensure a coordinated, efficient, effective and consultative approach to the administration of justice and undertaking reforms in the justice sector. The ELC CUC were lodged by the Chief Justice and they are found in every ELC

station. They include NLC, counties, LSK, AJS representatives and national government institutions that use the specialized ELC court. ELC CUC pillars are sensitization, training and policy development with mandated stakeholders.

The Commission may, on its own motion or upon invitation, seek to join legal proceedings in a court of law or judicial tribunal as interested party, intervener or *amicus curiae*. Where the Commission declines the request to be enjoined in such proceedings, it shall give written reasons for its decision. In determining whether to join proceedings as an interested party, intervener or *amicus curiae*, the Commission shall satisfy itself that the issues before the court —

- a) are matters of public interest on land;
- b) are matters raising substantial policy implications;
- c) are matters affecting land administration and management, valuation, land use planning, environment; or
- d) are matters of interest to the Commission in light of its mandate.

5.5.2 Land Acquisition Tribunal

The Land Acquisition Tribunal was established under section 133 C through the Land Act amendment of 2019 to hear and determine appeals from decisions of the National Land Commission in matters relating to the process of compulsory acquisition of land.. A matter relating to compulsory acquisition of land or creation of way leaves, easements and public right of way, shall, in the first instance, be referred to the Tribunal. The Tribunal has power to confirm, vary or quash the decision of the Commission. The Tribunal may, in matters relating to compulsory acquisition of land, hear and determine a complaint before it arising under Articles 23 (2) and 47 (3) of the Constitution, using the framework set out under the Fair Administrative Action Act or any other law.

A party to an application to the Tribunal who is dissatisfied with the decision of the Tribunal may, in the prescribed time and manner, appeal to the court on any of the following grounds—

- (a) the decision of the Tribunal was contrary to law or to some usage having the force of law;
- (b) the Tribunal failed to determine some material issue of law or usage having the force of law; or
- (c) a substantial error or defect in the procedure provided by or under this Act has produced error or defect in the decision of the case upon the merits. An appeal from the decision of the Tribunal may be made on a question of law only.

Any person who, being a public officer divulges any information on an intended land acquisition to any person before publication of the notice of the intention to acquire the land with an intention to influence any form of transaction for purposes of conferring any benefit as a result of the acquisition; or assists, facilitates, or in way aids any transaction in such land contrary to any law, commits an offence

5.5.3 Energy and Petroleum Tribunal

The tribunal is established under Section 25 of the Energy Act and succeeds the Energy Tribunal under Energy Act Cap 314 (Repealed).

The tribunal exercises its appellate jurisdiction in regards to:

- Disputes from decisions of the EPRA or licensing authority relating to energy mayters (Section 42, Energy Act)
- Disputes regarding decisions of the Cabinet Secretary in relation to the geothermal resources license (Section 80(7), Energy Act)
- Disputes arising out of a decision of the EPPRA refusing to renew or grant a license or permit or revoking a license or

permit (Section 106(a), Energy Act); imposing conditions on a license or permit; refusing to replace or amend a license or permit

- Disputes arising out of decision of the authority relating to authorization to generate electrical energy (Section 121(4), Energy Act)
- Disputes relating to certificates for electrical workers (Section 149(4), Energy Act) and licenses for electrical contractors (Section 150(4), Energy Act)
- Disputes with regard to compensation relating to lopped trees and hedges (Section 180(2), Energy Act)
- Grievances in relation to orders by an adjudication officer or National Government or County Government or other Authority regarding adjudication under energy efficiency and conservation (Section 197, Energy Act)

It exercises original civil jurisdiction in disputes between a licensee and a third party or between licensees (Section 36(3), Energy Act). EPT exercises a review jurisdiction over its judgments or orders which may be instituted on its own motion or upon application by an aggrieved party (Section 37(1), Energy Act)

The ELC courts have upheld the due process requirement and refused to exercise jurisdiction in matters preserved by statute for the EPT or its predecessor, the Energy Tribunal (*Okiya Omtatah v Kenya Power Lightning Company and 10 others* (2018) eKLR (Malindi ELC). Appeal from EPT lie with the High Court within 30 days. Under section 13, ELC Act, courts have also held that ELC has original and appellate jurisdiction to hear and determine all disputes relating to the environment and use, occupation and title to land pursuant to Article 162(2) (b), COK (*Swami Narayan Flats Limited v Kenya Power and Lighting Company Ltd and 3 others* [2019] eKLR (Nairobi ELC)).

5.5.4 National Environment Tribunal

NET is established under section 125, EMCA. It exercises an appellate jurisdiction and its jurisdiction is limited to the determination of:

- Grievances related to the grant of a license or permit or a refusal to grant a license or permit or transfer of a licence or permit under EMCA or the regulations
- The imposition of any condition, limitation or restriction on an aggrieved party's license
- The amount of money which the aggrieved is required to pay as fee
- The imposition against an aggrieved party of an environmental restoration order or environmental improvement order by NEMA under EMCA or the regulations (Section 129(1))

5.6 Investigation and Prosecution

5.6.1 Office of Director of Public Prosecution

Pursuant to Article 157, COK as legislated under section (5) 1 (a) of the ODPP Act , the Director of Public Prosecution shall have power to direct the Inspector-General to investigate any information or allegation of criminal conduct and the Inspector-General shall comply with any such direction. The Director may also exercise State powers of prosecution and may institute, undertake and take over criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed. Under section (5) 4 (c) of the ODPP Act, the Director shall cooperate with the National Police Service, investigative agencies, the courts, the legal profession and other Government agencies or institutions such as NLC so as to ensure the fairness and effectiveness of public prosecutions.

The division of Land, Environment and related Crimes Division is situated under the Department of Emerging, International and Economic Crimes of the ODPP. The division's roles include the following: it conducts criminal and related court proceedings of land and environment matters; promotes collaboration with stakeholders; advises government agencies and guides investigating agencies on land and economic related crimes; traces criminal assets and handles forfeiture proceedings.

5.6.2 Directorate of Criminal Investigations

Under the direction, command and control of the Inspector General, the Directorate of Criminal Investigations performs the following responsibilities among others: collects and provides criminal intelligence; undertakes investigations of serious crimes including economic crimes and cyber-crime; maintains law and order; detects and prevents crime; apprehends offenders; maintain criminal records; conduct forensic analysis; execute the directions given to the Inspector-General by the Director of Public Prosecutions pursuant to Article 157 (4) of the Constitution; co-ordinate country Interpol Affairs; investigate any matter that may be referred to it by the Independent Police Oversight Authority; and perform any other function conferred on it by any other written law

This guide has described various offences that NLC might uncover during its investigation and inquiry processes. NLC can refer them to DCI for processing and further action in accordance to its mandate. The following offences under the Penal Code are also related to land matters and if uncovered through the NLC investigations, NLC can also refer them to DCI for further investigations:

- Any person who, being a trustee of any property, destroys the property with intent to defraud, or, with intent to defraud, converts the property to any use not authorized by the trust, is guilty of a felony and is liable to imprisonment for seven years.

For the purposes of this section, “trustee” includes trustees upon express trusts created by a deed, will, or instrument in writing, whether for a public or private or charitable purpose (Section 327, PC)

- Any person who makes a false document purporting to be what in fact it is not or alters a document without authority in such a manner that if the alteration had been authorized it would have altered the effect of the document commits an offence. Details of this offence are provided including making a false document electronically or without authority under Section 346, PC
- Any person who forges any document or electronic record is guilty of an offence which, unless otherwise stated, is a felony (Section 349, PC)
- Any person who knowingly utters as and for a subsisting and effectual document any document or electronic record which has by any lawful authority been ordered to be revoked, cancelled or suspended, or the operation of which has ceased by effluxion of time, or by death, or by the happening of any other event, is guilty of an offence (Section 354CPC)
- Any person who, by means of any false and fraudulent representations as to the nature, contents or operation of a document or electronic record, procures another to sign or execute the document or electronic record, is guilty of an offence of the same kind, and is liable to the same punishment, as if he had forged the document or electronic record. (Section 355, PC)
- Any person who, with intent to defraud or to deceive without lawful authority or excuse makes, signs or executes for or in the name or on account of another person, whether by procuration or otherwise, any document or electronic record or writing; or knowingly utters any document or electronic

record or writing so made, signed or executed by another person is guilty of a felony (Section 357, PC)

An offence under the Penal Code (Cap. 63) may be tried by the High Court, or by a subordinate court by which the offence is shown in the fifth column of the First Schedule to the Code to be triable. An offence under any law other than the Penal Code (Cap. 63) shall, when a court is mentioned in that behalf in that law, be tried by that court. When no court is so mentioned, it may, subject to the CPC, be tried by the High Court, or by a subordinate court by which the offence is shown in the fifth column of the First Schedule to the CPC to be triable.

5.6.3 Ethics and Anti-Corruption Commission

The functions of the Ethics and Anti-Corruption Commission derive from the provisions of Articles 79 and 252 of the Constitution, the Ethics and Anti-Corruption Commission Act, and the Leadership and Integrity Act.

The Ethics and Anti-Corruption Commission (EACC) is a statutory body established under Section 3 of the Ethics and Anti-Corruption Commission Act pursuant to Article 79 of the Constitution of Kenya. These laws provide, among other things, for the functions and powers of the Commission as well as its role in implementing Chapter Six of the Constitution (on leadership and integrity).

The Commission also implements the Anti-Corruption and Economic Crimes Act. Section 11 of the Ethics and Anti-Corruption Commission Act provides for additional functions for the Ethics and Anti-Corruption Commission. In relation to State officers the EACC is tasked to: develop and promote standards and best practices in integrity and anti-corruption; develop a code of ethics; work with other State and public offices in the development and promotion of standards and best practices in integrity and anti-corruption; receive complaints on

the breach of the code of ethics by public officers; investigate and recommend to the Director of Public Prosecutions the prosecution of any acts of corruption, bribery or economic crimes or violation of codes of ethics or other matter prescribed under the Ethics and Anti-Corruption Commission Act, the Anti-Corruption and Economic Crimes Act or any other law enacted pursuant to Chapter Six of the Constitution (on leadership and integrity).

5.6.4 The National Environmental Complaints Committee

The National Environmental Complaints Committee (NECC) was established under Sections 31 and 32 of the Environmental Management and Co-ordination Act, 1999 as amended by Section 21, EMCA (Amendment Act, 2015). It was formerly known as the Public Complaints Committee (PCC) but its name changed in the EMCA (Amendment) No. 5 of 2015).

The Committee is the body charged with the task of investigating complaints or allegations regarding the condition of the environment in Kenya and suspected cases of environmental degradation. It plays an important role in the facilitation of alternative dispute resolution mechanisms relating to environmental matters. NECC is required by law to submit reports of its findings and recommendations to National Environment Committee (Section 32(b), EMCA) and thus contributes significantly to the formulation and development of environmental policy. The committee is empowered to undertake public litigation on behalf of the citizens in environmental matters (Section 21, EMCA)

5.6.5 National Cohesion and Integration Commission

The commission is a statutory body established under the National Cohesion & Integration Act No 12 of 2008. The Commission's object and purpose, as provided in Section 25 of the Act is to facilitate and promote equal opportunity, good relations,

harmony and peaceful co-existence of persons of different ethnic and racial communities and advice the Government on all matters thereof; Promote arbitration, conciliation, mediation and similar forms of conflict resolution mechanisms; Investigate complaints of discrimination and make recommendations to the Attorney General, Human Rights Commission or other authority on remedial measures to be taken; Determine strategies and priorities in all socio-economic, political and development policies of the government impacting on ethnic relations and advise on their implementation. Often, the underlying causes of matters investigated by NCIC are related to land disputes and conflicts.

5.6.6 The Kenya National Commission on Human Rights

KNCHR is an independent National Human Rights Institution created by Article 59 of the Constitution of Kenya 2010 and established through the KNCHR Act 2011. It is the state's lead agency in the promotion and protection of human rights. The Commission is tasked with the following responsibilities:

- It investigates complaints about alleged abuses of human rights, except those relating to the violation of the principle of equality and freedom from discriminations under the gender and equality commission, and takes steps to secure appropriate redress where human rights have been violated.
- On its own initiative or on the basis of complaints, it investigate or researches matters in respect to human rights, and makes recommendations to improve the functioning of State organs;
- It acts as the principal organ of the State in ensuring compliance with obligations under international and regional treaties and conventions relating to human rights except those that relate to the rights of special interest groups protected under the law relating to equality and non-discrimination;

- It formulates, implements and oversees programs intended to raise public awareness of the rights and obligations of a citizen under the Constitution

5.6.7 National Gender and Equality Commission

NLC is guided by the principles of land policy under Article 60 of the constitution which include elimination of gender discrimination in law, customs and practices related to land and property in land. NLC can partner with NGECE to mainstream gender inclusivity and equality in the recommendation of its investigation and inquiry recommendations.

The Commission was established by the National Gender and Equality Commission Act, 2011 pursuant to Article 59 (4) of the Constitution of Kenya. The functions of the Commission as provided for in Section 8 of the National Gender and Equality Act 2011 include working with the National Commission on Human Rights, the Commission on Administrative Justice and other related institutions such as NLC to ensure efficiency, effectiveness and complementarity in their activities and to establish mechanisms for referrals and collaborations in the protection and promotion of rights related to the principle of equality and freedom from discrimination.

The mandate of the Commission is to promote and ensure gender equality, principles of equality and non-discrimination for all persons in Kenya as provided for in the Constitution of Kenya 2010 with a focus on the following Special Interest Groups (SIGs): women, persons with disability, children, youth, older members of society, minority and marginalised groups. The functions of the Commission as provided for in Section 8 of the National Gender and Equality Act 2011 are to promote gender equality and freedom from discrimination in accordance with Article 27 of the Constitution;

- (b) monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions;
- (c) act as the principal organ of the State in ensuring compliance with all treaties and conventions ratified by Kenya relating to issues of equality and freedom from discrimination and relating to special interest groups including minorities and marginalized persons, women, persons with disabilities, and children;
- (d) coordinate and facilitate mainstreaming of issues of gender, persons with disability and other marginalized groups in national development and to advise the Government on all aspects thereof;
- f) investigate on its own initiative or on the basis of complaints, any matter in respect of any violations of the principle of equality and freedom from discrimination and make recommendations for the improvement of the functioning of the institutions concerned;
- (g) work with other relevant institutions in the development of standards for the implementation of policies for the progressive realization of the economic and social rights specified in Article 43 of the Constitution and other written laws

5.6.8 Commission of Administration of Justice

CAJ is established under Article 15 of the constitution. It handles issues of maladministration under Article 59 (2) (h), (i), (j), and (k) of COK

The functions of the Commission are: to investigate any conduct in state affairs, or any act or omission in public administration in any sphere of government, that is alleged or suspected to

be prejudicial or improper or to result in any impropriety or prejudice; to investigate complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct; to report investigated complaints and take remedial action; to perform any other functions prescribed by legislation.

The CAJ ensures aggrieved member's expeditious and impartial redress when a public officer or Office is alleged to be guilty of misuse of office, corruption, unethical behavior, breach of integrity, maladministration, delay in provision of necessary services, any form of injustice, discourtesy incompetence, misbehavior or any inefficiency or ineptitude on the part of public officials. It supervises all public offices, including judiciary and NLC, to ensure related service delivery

FIRST SCHEDULE

AUTHENTICATION OF VALID CONVERSIONS

Process to be Authenticated	Technical Evidence Required
Survey Plans Section 30-33, Survey Act Survey Manual	<p>Authority to Survey in the letter of allotment.</p> <ul style="list-style-type: none"> • Signature of a Government/Licensed Surveyor • Authentication by Director of Survey • Survey file Reference number • Computation number • Field book number • Folio Register number (FR Number). • Land Reference or parcel number • Registration Block number • Registration District • Land locality • Coordinates List
Deed Plans Section 5 Survey Act Section 30-33 Survey Act	<ul style="list-style-type: none"> • Indent from Commissioner of Lands • Seal of the Director of Survey • Signature of the authorised officer • Deed plan number • Land reference number • Forwarding letter from the Director of Survey to the Commissioner of Lands
Amended Registry Index Map	<ul style="list-style-type: none"> • Indent from Commissioner of Lands. • Must the seal of Director of Survey • Signature of the authorised officer. • Parcel number/ LR Number • Area list (letter indicating sizes of each parcel).

Letter of Allotment:	<ul style="list-style-type: none"> • Authority to allocate • Reference number or Plot number • Reference Plan • Signature of the issuing officer • Date of issuance • Letter of acceptance and payment • Development Conditions • Payment Tabulation (Stand Premium, Annual Ground rent).
Lease Document: Section 54 LRA	<ul style="list-style-type: none"> • Letter from the Director of Survey forwarding the Deed Plan or the RIM • Special conditions as per the letter of allotment • Beneficiary details- Address, ID/ Passport, PIN and Passport size photo. • Company -Certificate of Incorporation, CR 12 • Company Seal • LR or Parcel number • Consistent survey plans. • Acreage consistent with the Survey Plans • Registration Unit • Sealed and signed by the Commissioner of Lands • Date of signing by the Commissioner of Lands • Date of Signing by the beneficiary and witnessing by an advocate. • Forwarding letter from the Commissioner of Lands to the Land Registrar. • Registered and signed by the registrar of titles.

2.4.2. Post-Constitution of Kenya, 2010

Process to be Authenticated	<ul style="list-style-type: none"> • Technical Evidence Required
Plan Section 12 of the Land Act PLUPA Regulations	<ul style="list-style-type: none"> • Part Development Plans prepared with consent of the Commission for allocation of Public Land (Refer to the requirements in Table 1 above between 1998- 2019). Public participation – Gazette Notice and advertisement
Survey	<p>Survey documents requirements similar to Table 1 above with the following additions:</p> <ul style="list-style-type: none"> • Cadastral map
Section 12 (1) of the Land Act	<ul style="list-style-type: none"> • Application for allocation to the County Government where the land is situated • CECM's/ CS requests the Commission to allocate the land. Accompanying documents: Survey plan, approved plan, approval by the County or National Assembly in case the land is substantial. • The method of allocation complies with Section 12 of the Land Act.
Reservation Article 66 (1) Section 15 – LA Regulations	<ul style="list-style-type: none"> • Gazette Notice • Reservation Order • Survey Plan or Base Map • Purpose/User for reservation • Locality • Size/ Area of the land • Recommendation from the Commissioner for Lands • Reservation date

<p>Compulsory Acquisition</p> <p>Part VIII of the Land Act-</p> <p>(Section 107-133)</p> <p>Regulations</p>	<ul style="list-style-type: none"> • Request of acquisition from the CS or CECM • Proof of availability of funds by the acquiring body • Commission Approval/ Rejection of the request for Acquisition • Notice of Intention to Acquire • Inspection notes under Section 107(4) of the Land Act • Registrar's restriction entry • Geo-referencing and authentication by the Director of Survey • Notice of Inquiries • Inquiry report on rights and interests • Valuation report as per the applicable Land Value Index • Cut-off date • Award of Compensation • Statement of Acceptance/ Rejection • Bank account documents • Proof of payment
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SECOND SCHEDULE

Distribution of Functions between the National and County Governments

(under Article 185 (2) Article 185 (2), Article 186 (1) and 187 (2))

Part 1: National Government

2. Foreign affairs, foreign policy and international trade.
3. The use of international waters and water resources.
4. Immigration and citizenship.
5. The relationship between religion and state.
6. Language policy and the promotion of official and local languages.
7. National defence and the use of the national defence services.
8. Police services, including—
 - a. the setting of standards of recruitment, training of police and use of police services;
 - b. criminal law; and
 - c. correctional services.
9. Courts.
10. National economic policy and planning.
11. Monetary policy, currency, banking (including central banking), the incorporation and regulation of banking, insurance and financial corporations.
12. National statistics and data on population, the economy and society generally.
13. Intellectual property rights.
14. Labour standards.
15. Consumer protection, including standards for social security and professional pension plans.
16. Education policy, standards, curricula, examinations and the granting of university charters
17. Universities, tertiary educational institutions and other institutions of research and higher learning and primary

schools, special education, secondary schools and special education institutions.

18. Promotion of sports and sports education.
19. Transport and communications, including, in particular—
 - a. road traffic;
 - b. the construction and operation of national trunk roads;
20. National public works.
21. Housing policy.
22. General principles of land planning and the co-ordination of planning by the counties.
23. Protection of the environment and natural resources with a view to establishing a durable and sustainable system of development, including, in particular—
 - a. fishing, hunting and gathering;
 - b. protection of animals and wildlife;
 - c. water protection, securing sufficient residual water, hydraulic engineering and the safety of dams; and
 - d. energy policy.
24. National referral health facilities.
25. Disaster management.
26. Ancient and historical monuments of national importance.
27. National elections.
28. Health policy.
29. Agricultural policy.
30. Veterinary policy.
31. Energy policy including electricity and gas reticulation and energy regulation.
32. Capacity building and technical assistance to the counties.
33. Public investment.
34. National betting, casinos and other forms of gambling.
35. Tourism policy and development.

Part 2: County Government

The functions and powers of the county are—

1. Agriculture, including—
 - a. crop and animal husbandry;
 - b. livestock sale yards;
 - c. county abattoirs;
 - d. plant and animal disease control; and
 - e. fisheries.
2. County health services, including, in particular—
 - a. county health facilities and pharmacies;
 - b. ambulance services;
 - c. promotion of primary health care;
 - d. licensing and control of undertakings that sell food to the public;
 - e. veterinary services (excluding regulation of the profession);
 - f. cemeteries, funeral parlours and crematoria; and
 - g. refuse removal, refuse dumps and solid waste disposal.
3. Control of air pollution, noise pollution, other public nuisances and outdoor advertising.
4. Cultural activities, public entertainment and public amenities, including—
 - a. betting, casinos and other forms of gambling;
 - b. racing;
 - c. liquor licensing;
 - d. cinemas;
 - e. video shows and hiring;
 - f. libraries;
 - g. museums;
 - h. sports and cultural activities and facilities; and
 - i. county parks, beaches and recreation facilities.
5. County transport, including—
 - a. county roads;
 - b. street lighting;
 - c. traffic and parking;
 - d. public road transport; and

- e. ferries and harbours, excluding the regulation of international and national shipping and matters related thereto.
- 6. Animal control and welfare, including—
 - a. licensing of dogs; and
 - b. facilities for the accommodation, care and burial of animals.
- 7. Trade development and regulation, including—
 - a. markets;
 - b. trade licences (excluding regulation of professions);
 - c. fair trading practices;
 - d. local tourism; and
 - e. cooperative societies.
- 8. County planning and development, including—
 - a. statistics;
 - b. land survey and mapping;
 - c. boundaries and fencing;
 - d. housing; and
 - e. electricity and gas reticulation and energy regulation.
- 9. Pre-primary education, village polytechnics, homecraft centres and childcare facilities.
- 10. Implementation of specific national government policies on natural resources and environmental conservation, including—
 - a. soil and water conservation; and
 - b. forestry.
- 11. County public works and services, including—
 - a. storm water management systems in built-up areas; and
 - b. water and sanitation services.
- 12. Fire fighting services and disaster management.
- 13. Control of drugs and pornography.
- 14. Ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level.

THIRD SCHEDULE

LIST OF STATUTES, SUBSIDIARY LEGISLATION AND TREATIES

A. Statutes

Access to Information Act (No. 31 of 2016)
Agriculture Act Cap 318 (repealed)
Appellate Jurisdiction Act Cap 9
Arbitration (No. 4 of 1995)
Auctioneers Act Cap 526
Biosafety Act (No. 2 of 2009)
Civil Procedure Act Cap 21
Climate Change (No. 11 of 2016)
Community Land (No. 27 of 2016)
Constitution of Kenya 2010
County Government Act No. 17 of 2012)
County Governments (Amendment) Act, No 13 of 2014
County Governments (Amendment) Act, 2016 (No 1 of 2016)
County Governments (Amendment) (No 2) Act, (No. 17 of 2016)
Court of Appeal (Organization and Administration) No. 28 of 2015
Criminal Procedure Code (Capl. 75)
Corps Act, 2013,
Energy Act 2019 (No. 1 of 2019)
Energy Act Cap 314 (repealed)
Environment and Land Court Act (No. 19 of 2011)
Environmental Management and Co-ordination Act 1999 (Cap 387)
Environmental Management and Co-ordination (Amendment) Act, 2015 (No. 5 of 2015)
Evidence Act Cap 80
Fair Administrative Action (No. 4 of 2015)
Fertilizers and Animal Foodstuffs (Amendment) Act, 2015 (No.

20 of 2015)

Fisheries Management and Development (Act No. 35 of 2016)

Foreign Judgments (Reciprocal Enforcement) (Cap. 43)

Forest Act 2005 (repealed)

Forest Conservation and Management (No. 34 of 2016)

Government Proceedings (Cap. 40)

Government Proceedings (Amendment) Act, 2015

Government Land Acts Cap. 282 (repealed)

India Transfer and Property act 1882 (repealed)

Judicature (Cap. 8)

Judicature (Amendment) Act (No 10A of 2012)

Land (Group Representatives) Act Cap 287

Land Act (No. 6 of 2012)

Land Acquisition Act Cap 295

Land Adjudication Act (Cap.284)

Land Consolidation Act (Cap 283)

Land Control Act (Cap 302)

Land Disputes Tribunal Act. Cap 303A (repealed)

Land Laws Amendment Act No. 28 of 2016

Land Registration Act (No. 3 of 2012)

Land Titles Act (Cap 281) (repealed)

Landlord and Tenant (Shops, Hotels and Catering Establishments) (Cap 301)

Law Reform Act (Cap 26)

Limitation of Actions Act (Cap. 22)

Local Government Act Cap 265 (repealed)

Magistrates' Courts Act (No. 26 of 2015)

Mining Act Cap 306 (repealed)

Mining Act 2016 (No. 12 of 2016)

National Land Commission act (No. 5 of 2012)

Penal Code (Cap 63)

Petroleum (Exploration and Production) Act Chapter 308 (repealed)

Petroleum Act (No. 2 of 2019)

Physical Planning Act No. 6 of 1996)
Plant Protection (Cap 324)
Protection of Traditional Knowledge and Cultural Expressions
(No. 33 of 2016)
Protection of Traditional Knowledge and Cultural Expressions
Act, 2016 (No. 33 of 2016)
Public Archives and Documentation Service Act Cap 19
Registered Land Act Cap. 300 (repealed)
Registration of Documents Act Cap. 285 (repealed)
Rent Restriction (Cap. 296)
Statute Law (Miscellaneous Amendments) Act, 2012 (No. 12 of
2012)
Statute Law (Miscellaneous Amendments) Act, 2014 (No. 18 of
2014)
Statute Law (Miscellaneous Amendments) Act, 2015 (No. 25 of
2015)
Statute Law (Miscellaneous Amendments) Act, 2016 (No. 7 of
2016)
Statute Law (Miscellaneous Amendments) Act, 2018 (No. 18 of
2018)
Statute Law (Miscellaneous Amendments) Act, 2018 (No. 4 of
2018)
Timber Act Cap 386 (repealed)
Trust Land Act Cap 288
Trustees (Perpetual Succession) Act No. 2 of 1980 (Cap 1964)
Urban Areas and Cities (Amendment) Act, 2019 (No. 3 of 2019)
Urban Areas and Cities Act, 2011 (No. 13 of 2011)
Wakf Commissioners (Cap. 109)
Water Act (No. 43 of 2016)
Wayleave Act Cap. 292 (repealed)
Wildlife Conservation and Management Act (No. 47 of 2013)

B. Subsidiary Legislation

1. Biosafety (Contained Use) Regulations, 2011
2. Community Land Regulations (L.N. No. 279 of 2018)
3. Constitution of Kenya 2010 (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2011.
4. Controlled Substances Regulations 2007
5. Court of Appeal Rules
6. Electric Power (Complaints and Dispute Resolutions) Rules, 2006 (L.N. No. 106 of 2012)
7. Electric Power (Complaints and Dispute Resolutions) Rules, 2006 (L.N. No. 106 of 2012)
8. Energy (Energy Management) Regulations, 2012 (L.N. No. 102 of 2012)
9. Energy (Energy Management) Regulations, 2012 (L.N. No. 102 of 2012)
10. Energy (Solar Photovoltaic Systems) Regulations, 2012 (L.N. No. 103 of 2012)
11. Energy (Solar Photovoltaic Systems) Regulations, 2012 (L.N. No. 103 of 2012)
12. Energy (Solar Water Heating) Regulations, 2012 (L.N. No. 43 of 2012)
13. Energy (Solar Water Heating) Regulations, 2012 (L.N. No. 43 of 2012)
14. Environmental Impact Assessment Regulations
15. Government Lands (Appeals) Rules
16. Land (Allocation of Public Land) Regulations, 2017 (S.I No. 284 of 2017)
17. Land (Assessment of Just Compensation) Rules, 2017 (S.I No. 283 of 2017)
18. Land (Conversion of Land) Rules, 2017 (S.I No. 282 of 2017)
19. Land Extension and Renewal Leases) Rules, 2017 (S.I No. 281 of 2017)
20. Land Adjudication Regulations 1970 (Cap. 284)
21. Land Control Regulations, 1967
22. Land Registration (Forms) Regulations, 2014 (L.N. No. 104 of 2014)

23. Land Registration (General) Regulations, 2017 (S.I. No. 278 of 2017)
24. Land Registration (Registration Units) Order, 2017 (S.I. No. 277 of 2017)
25. Land Regulations 2017 (S.I. No. 280 of 2017)
26. Licensed Surveyors Code of Professional Conduct, 1997 (Cap. 299)
27. National Land Commission (Investigation of Historical Land Injustices) Regulations, 2017 (L.N. No. 258 of 2017)
28. Noise Regulations 2009
29. Petroleum (Exploration and Production) Regulations, 1984
30. Physical Planning (Building and Development) (Control) Rules, 1998
31. Plant Protection Rules Cap 178
32. Practice and Procedure Rules 2013
33. Practice Directions on Proceedings in the Environment and Land Courts, and on Proceedings Relating to the Environment and the Use and Occupation of, and title to Land and Proceedings in other Courts Gazette Notice No. 5178
34. Supreme Court Rules, 2012
35. Survey Regulations 1994 (Cap 299)
36. Trustees Perpetual Succession) Regulations, 1976
37. Waste Management Regulations 2006
38. Water Quality Regulations 2006
39. Wetlands Regulations 2006
40. Wildlife Conservation and Management (Compensation Scheme) Regulations 2015
41. Wildlife Conservation and Management (Implementation of Treaties) Regulations, 2017 (L.N. No. 243 of 2017)
42. Wildlife Conservation and Management (Joint Management of Protected Water Towers) Regulations, 2017 (L.N. No. 243 of 2017)
43. Wildlife Conservation and Management (National Parks) Amendment (No. 2) Regulations, 2016 (L.N. No. 86 of 2016)
44. Wildlife Conservation and Management (Protection of Endangered and Threatened Ecosystems, Habitats and Species) Regulations, 2017 (L.N. No. 242 of 2017)

C. Ratified Treaties and Conventions

1. Paris Agreement
2. Convention of Biological Diversity (CBD)
3. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)
4. Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention)
5. The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity
6. The Kyoto Protocol to the United Nations Framework Convention on Climate Change
7. United Nations Convention to Combat Desertification (UNCCD)
8. Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention)
9. Stockholm Convention on Persistent Organic Pollutants
10. Cartagena Protocol on Biosafety to the Convention on Biological Diversity
11. Minamata Convention on Mercury
12. United Nations Framework Convention on Climate Change (UNFC-CC)
13. Vienna Convention for the Production of the Ozone Layer
14. Montreal Protocol on Substances that Deplete the Ozone Layer
15. Constitution of the Food and Agriculture Organization of the United Nations
16. International Grains Agreement
17. International Sugar Agreement 1992 (ISA)
18. International Plant Protection Convention
19. Constitution of the International Rice Commission
20. International Convention for the Protection of New Varieties of Plants
21. Agreement Establishing International Fund for Agriculture Development
22. Agreement for the Establishment of the Global Crop Diversity Trust

23. International Treaty on Plant Genetic Resources for Food and Agriculture
24. Bamako Convention on the Ban of the Import into Africa and the Control of Trans-Boundary Movement and Management of Hazardous Wastes within Africa
25. Phytosanitary Convention for Africa
26. The 2010 Nile Basin Cooperative Framework Agreement
27. Convention on the Establishment of the African Centre for Fertilizer Development
28. Convention on the Establishment of the African Centre for Fertilizer Development
29. Convention on the African Migratory Locust
30. African Convention on the Conservation of Nature and Natural Resources (Revised Version)
31. International Coffee Agreements (ICA)
32. Agreement Establishing the Common Fund for Commodities
33. Fourth ACP-EEC Convention
34. WTO Agreement on the Application of Sanitary and Phytosanitary Measures
35. East Africa Community Protocol for the Sustainable Development of Lake Victoria Basin
36. East Africa Community Protocol on Environment and Natural Resources Management
37. East Africa Community Protocol on Sanitary and Phytosanitary Measures

FOURTH SCHEDULE

ACRONYMS

ADR	Alternative Dispute Resolution
AfCFTA	African Continental Free Trade Area
AG	Attorney General
AJS	Alternative Justice Systems
CECM	County Executive Committee Member
CJ	Chief Justice
COK	Constitution of Kenya, 2010
CPA	Civil Procedure Act, Cap 21
CPC	Criminal Procedure Code, Cap. 75
CUC	Court Users Committee
CPR	Civil Procedure Rules
CS	Cabinet Secretary
EIA	Environmental Impact Assessment
ELC	Environment and Land Court
EMCA	Environmental Management and Coordination Act, 1999
EPRA	Energy and Petroleum Regulatory Authority
EPT	Energy and Petroleum Tribunal
ERC	Energy Regulatory Commission
FAA	Fair Administrative Act, 2015
GLA	Government Lands Act, Cap 280 (Repealed)
HLI	Historical Land Injustice
IGR	Intergovernmental Governmental Relations Act, 2012

IGRTC	Intergovernmental Relations Technical Committee
KFS	Kenya Forest Review
KLR	Kenya Law Reports
KWS	Kenya Wildlife Service
LA	Land Act
LADR	Legal Affairs and Dispute Resolution
LSK	Law Society of Kenya
NECC	National Environmental Complaints Committee
NEMA	National Environment Management Authority
NET	National Environment Tribunal
NGAO	National Government Administrative Offices
NLC	National Land Commission
ODPP	Officer of Director of Public Prosecution
PC	Penal Code, Cap. 63
PCC	Public Complaints Committee
PLUPA	Physical and Land Planning Use Planning Act, No. 13, 2019
RAP	Resettlement Action Plan
RLA	Registration of Land Act, Cap 300 (Repealed)
RTA	Registration of Titles Act, Cap 281 (Repealed)
SIGs	Special Interest Groups
VCLT	Vienna Convention on the Law of Treaties
WMCA	Wildlife Conservation and Management Act, No 47, 2013



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