

DRAFT

PHYSICAL PLANNING BILL, 2014

A Bill for an Act of Parliament to provide a legal framework for the planning, use, management, regulation and development of land, to repeal the Physical Planning Act, 1996, and for connected purposes.

ENACTED by Parliament as follows—

PART 1—PRELIMINARY

Short title 1. This Act may be cited as the Physical Planning Act, 2014.

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

“Cabinet Secretary” means the Cabinet Secretary responsible for matters related to physical planning;

“Council ” means the National Physical Planning Council established in accordance with section 7;

“development control” means the process of managing or regulating the carrying out of any works on land or making of any material change in the use of any structures, and ensuring compliance with physical development plans;

“Director-General” means the Director-General appointed in accordance with section 10;

“physical planning” means urban or regional planning, spatial planning, town and county planning, or land planning;

“planning authority” includes—

- (a) the Director-General;
- (b) a county director of physical planning;
- (c) a city director of physical planning;
- (d) a municipal director of physical planning; or
- (e) a city or municipal board of management.

Objects of the Act

3. The objects of this Act are—

- (a) to provide a structure for the administration and management of physical planning in Kenya;
- (b) to provide for the principles, procedures and standards for the preparation and implementation of physical development plans in Kenya, and in regions, counties, urban areas and cities;
- (c) to provide for the procedures and standards for development control and the regulation of land use;
- (d) to provide a framework for the co-ordination of physical development planning by county governments; and
- (e) to provide a mechanism for dispute resolution.

Conflict with other laws

4. If there is a conflict between the provisions in any written law and this Act in relation to physical planning or land use, this Act prevails.

Principles and norms

5. Every State organ, State officer, public officer and person engaged in physical planning or land use regulation is bound by—

- (a) Article 10 of the Constitution;
- (b) Article 60 of the Constitution; and
- (c) the principles, procedures and standards of physical planning contemplated in this Act.

Functions of the
National Land
Commission

6. For the purposes of this Act, the National Land Commission shall—

- (a) monitor and oversee land use planning in Kenya;
and
- (b) cause the preparation and approval of development plans for the management and use of reserved public land.

PART II—NATIONAL PHYSICAL PLANNING COUNCIL

The National Physical
Planning Council

7. (1) There is established the National Physical Planning Council

(2) The National Physical Planning Council comprises of—

- (a) the Cabinet Secretary for the time being responsible for matters related to physical planning, who shall be the chairperson;
- (b) the Cabinet Secretary for the time being responsible for matters related to economic planning;
- (c) the Cabinet Secretary for the time being responsible for matters related to the environment;
- (d) the Cabinet Secretary for the time being responsible for matters related to roads;
- (e) the Chairperson of the Council of Governors;
- (f) the Chairperson of the National Land Commission;
- (g) the chairperson of an institute of physical planners in Kenya;
- (h) the chairperson of an institution of surveyors in Kenya;
- (i) the chairperson of an association of architects in

Kenya;

- (j) the chairperson of an association representing the private sector in Kenya;
- (k) the Secretary to the National Economic and Social Council; and
- (l) the Director-General of Physical Planning who shall be the secretary to the Council.

(3) The Council may co-opt any other members necessary for the performance of its functions.

Functions of the Council

8. The functions of the Council are to—

- (a) promote effective integration of physical, economic and sectoral planning in the framework of national and county development policies;
- (b) ensure the mobilization of adequate resources for the preparation and implementation of physical development plans, policies and strategies;
- (c) consider and provide policy guidance for strategic spatial projects of national importance; and
- (d) perform any other function that may be conferred by this Act.

Council meetings

9. (1) The Council shall meet at least four times in a year.

(2) Subject to this Act, the Council may regulate its procedure.

(3) The Council may establish committees for the effective performance of its functions.

Director-General of
Physical Planning

10. (1) There is established the office of the Director-General

of Physical Planning which shall be an office in the public service.

(2) The Director-General is the chief government advisor on all matters relating to physical planning and may perform any other function that may be conferred by this Act or any other written law.

(3) The principal office of the Director-General is in Nairobi but the Director-General may establish such other offices in Kenya as may be required.

Qualifications of the
Director-General

11. A person is qualified for appointment as the Director-General if that person—

- (a) is a citizen of Kenya;
- (b) possesses a postgraduate degree from a recognized university in—
 - (i) urban planning;
 - (ii) regional planning;
 - (iii) spatial planning;
 - (iv) town planning;
 - (v) transport planning;
- (c) is registered as a physical planner under the Physical Planners' Registration Act, 1996;
- (d) is a corporate member of a recognised professional body of physical planners in Kenya;
- (e) has at least ten years' professional experience in physical planning; and
- (f) is not otherwise disqualified under the provisions of any other written law.

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- 12.** The Director-General is responsible for—
- (a) formulating national, regional, county and urban physical development policies, guidelines, standards and strategies;
 - (b) the preparation of national, regional and special area physical development plans;
 - (c) overseeing the proper execution of development control at the national and regional level, and providing technical support to county governments in development control;
 - (d) providing technical support to county governments in the preparation of county and local physical development plans;
 - (e) tracking and preparing status reports on the preparation and implementation of physical development plans in Kenya;
 - (f) advising the National Land Commission on—
 - (i) management of public land;
 - (ii) compulsory acquisition of land for public purposes;
 - (iii) planning of settlement schemes; and
 - (iv) physical planning during land adjudication;
 - (g) from time to time, undertaking studies and research on matters related to physical planning; and
 - (h) assisting county governments and boards of management of cities and urban areas in building capacity for the preparation of physical development plans and in development control.

- 13.** (1) There is established the office of a county director of physical planning which shall be an office in a county public service.

(2) A county director of physical planning is the adviser to a county government on all matters relating to physical planning and may perform any other functions that may be conferred by this Act.

(3) A county director of physical planning shall be guided by the policies, procedures, standards and strategies formulated by the Director-General in the performance of that county director's functions under this Act.

Qualifications of a county director of physical planning

14. A person is qualified for appointment as a county director of physical planning if that person—

- (a) is a citizen of Kenya;
- (b) possess a postgraduate university degree, from a recognized university, in—
 - (i) urban planning; or
 - (ii) regional planning;
- (c) is registered as a physical planner under the Physical Planners Registration Act, 1996;
- (d) is a corporate member of a recognised professional body of physical planners;
- (e) has at least seven years' professional experience in physical planning; and
- (f) is not otherwise disqualified under the provisions of any other written law.

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Functions of a county director of physical planning

15. A county director of physical planning is responsible for—

- (a) the formulation and implementation of county physical development policies, guidelines, standards and strategies;

- (b) the implementation of national and regional physical development plans, policies, standards and strategies in the county;
- (c) the preparation of county and local physical development plans;
- (d) development control in the county;
- (e) supervising the professional and technical performance of physical planning units in urban areas and cities;
- (f) from time to time, undertaking studies and research on matters related to county physical planning; and
- (g) preparing an annual status report on physical planning matters in the county.

City or municipal director of physical planning

16. (1) There is established the office of a city or municipal director of physical planning for each city or municipality, as the case may be, which shall be a public office in the county public service.

(2) A city or municipal director of physical planning is the adviser to a management board of a city or an urban area, as the case may be, on all matters relating to physical planning and may perform such other functions that may be conferred by this Act.

(3) A city or municipal director of physical planning shall be guided by policies, procedures and standards as formulated by the Director-General in the performance of that city or municipal director's functions under this Act.

Functions of a city or municipal director of physical planning

17. A city or municipal director of physical planning is responsible for—

- (a) formulating physical development policies, guidelines, standards and strategies for a city or an urban area, as the case may be;
- (b) the preparation of an integrated city development plan and local physical development plans;
- (c) ensuring the implementation of national, regional, county and city policies and strategies at the city or urban area level, as the case may be;
- (d) processing applications for development permission for a board of management of a city or an urban area, as the case may be;
- (e) from time to time, undertaking studies and research on matters related to physical planning; and
- (f) preparing an annual report on the state of physical planning of a city or urban area, as the case may be, and submitting the report to the relevant board of management.

Qualifications of a city or municipal director of physical planning

18. A person is qualified for appointment as a city or municipal director of physical planning if that person—

- (a) is a citizen of Kenya;
- (b) possess a postgraduate degree from a recognized university—
 - (i) in urban planning; or
 - (ii) regional Planning;
- (c) is registered as a physical planner under the Physical Planners Registration Act, 1996;
- (d) is a corporate member of a recognised professional body of physical planners;
- (e) has at least seven years' professional experience in physical planning; and

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(f) is not otherwise disqualified under the provisions of any other written law.

Indemnity for the Director-General, Directors and other officers

19. A director of physical planning is not be liable in an action or a proceeding for or in respect of an act done or omitted to be done without negligence and in good faith in the exercise of any of the functions conferred on that director of physical planning by or under this Act.

PART III— PHYSICAL DEVELOPMENT PLANS

A – NATIONAL PHYSICAL DEVELOPMENT PLAN

National Physical Development Plan

20. (1) The Director-General shall initiate and finalize the preparation of a National Physical Development Plan.

(2) The National Physical Development Plan—

(a) shall cover an implementation period of twenty years;

and

(b) may be reviewed after ten years.

Purpose and objects of National Physical Development Plan

21. (1) The National Physical Development Plan defines strategic policies for the determination of the general direction and trends of physical and sectoral development in Kenya and provides a framework for the use and development of land.

(2) The National Physical Development Plans is the basis for—

(a) the promotion of social and economic growth;

(b) the optimal exploitation, allocation and conservation of national resources;

(c) the promotion of balanced regional development; and

(d) the co-ordination of national, county, city and urban

areas in physical planning and development.

Initiation of a National Physical Development Plan

22. The Director-General, in consultation with the National Land Commission, shall initiate preparation of a National Physical Development Plan

Procedure for preparation of the National Physical Development Plan

23. (1) In preparing a National Physical Development Plan, the Director-General shall—

- (a) consider relevant national policies;
- (b) consult with national and county governments;
- (c) ensure effective participation by the relevant and stakeholders ;
- (d) develop a public communication strategy; and
- (e) reports periodically in the progress being made to the National Land Commission.

(2) The Director-General shall, at least fourteen days before commencement of the preparation of a National Physical Development Plan, publish a Notice in the *Gazette* and in at least two newspapers of national circulation of the intention to prepare a National Physical Development Plan and the Notice shall state the objectives of the plan, the purpose of the plan and the matters to be addressed in the plan;

(3) The Director-General shall hold at least three stakeholder forums during the preparation and finalization of the Plan.

Content of a national physical development plan

24. (1) A National Physical Development Plan shall include—

- (a) a vision statement;
- (b) the objectives of the plan;

- (c) situation analysis including—
 - (i) an analysis of the state of physical development in Kenya; and
 - (ii) the relevant studies and reports concerning physical development in Kenya;
- (d) strategies and measures necessary to resolve any issues or challenges relating to physical planning or development in Kenya;
- (e) maps and plans showing current and anticipated land use patterns;
- (f) an implementation framework; and
- (g) a monitoring and evaluation strategy; and
- (h) such other information as may be necessary.

(2) The Director-General shall, in addition to what is provided for in sub-section (1), take into account matters specified in the First Schedule.

Notice of preparation of
National Physical
Development Plan

25. (1) Within thirty days of the preparation of a National Physical Development Plan, the Director-General shall publish a Notice in the *Gazette* and in at least two newspapers of national circulation informing the public that the plan is available at the places and times designated in the notice for inspection and that any interested person may comment on the content of the plan.

(2) A person who comments on the content of the plan may submit those comments to the Director-General within thirty days of the date of the notice contemplated in sub-section (1).

(3) The Director-General shall consider the comments

made about the plan and notify the makers of the comments whether or not the comments have been incorporated in the plan within thirty days of receiving the comments.

(4) A person who has submitted comments to the Director-General and who is aggrieved by the decision of the Director-General may appeal to the National Physical Planning Liaison Committee within thirty days of being notified of the decision of the Director-General.

(5) A person who has appealed to the National Physical Planning Liaison Committee and is aggrieved by the decision of the Committee may appeal against that decision to the Environment and Land Court within fourteen days of the decision of the Committee.

(6) The decision of Environment and Land Court shall be final.

Approval of a National
Physical Development
Plan

26. (1) If there have been no appeals against the decision of the Director-General, or if all the appeals made against the Director-General's decision have been heard and determined, the Director-General shall submit the draft National Physical Development Plan to the Council for approval.

(2) Before the Council approves the plan, the Council may propose changes to the plan which shall be binding.

(3) The Director-General shall publish the approved plan in the *Gazette* and in at least two newspapers of national circulation within fourteen days of the Council's approval.

Implementation of a National Physical Development Plan

27. The national government and county governments shall base the preparation of regional physical development plans, county physical development plans, local physical development plans and sectoral plans on the National Physical Development Plan.

Reports

28. (1) At least three months before the end of the financial year, each public institution that is responsible for the application or the implementation of a National Physical Development Plan shall prepare and submit to the Director-General a report on the implementation of that physical development plan and the Director-General shall place the reports before the Council for the Council's consideration.

(2) At least three months before the end of the financial year, the Director-General shall prepare a report on the status of the implementation of the National Physical Development Plan and place the report before the Council for the Council's consideration.

Revision

29. (1) The Director-General shall initiate the revision of the National Physical Development Plan not earlier than ten years after the publication of that plan under section 27 and not later than two years before the lapse of twenty years.

(2) Sections 25 and 26, with the necessary modifications, apply to a revision of the National Physical Development Plan.

B—REGIONAL PHYSICAL DEVELOPMENT PLAN

Establishment of regional planning joint committees

30. (1) The Director-General may establish a regional physical

planning joint committee where necessary and in consultation with the relevant county governments.

(2) A regional physical planning joint committee shall remain in office until a regional physical development plan has been approved by the Council and published in the *Gazette* by the Director-General, but in any case that committee shall not remain in office for longer than two years.

(3) A regional planning joint committee shall consist of—

(a) the Director-General, who shall be its chairperson;

(b) the members of county executive committees responsible for matters relating to physical planning of the relevant county governments;

(c) the chairpersons of the relevant County Land Management Boards;

(d) a representative each from the ministries responsible for—

(i) agriculture;

(ii) livestock;

(iii) infrastructure;

(iv) transport;

(v) environment;

(vi) water;

(vii) tourism;

(viii) natural resources;

(ix) energy; and

(x) economic development; and

(e) the chief executive officers of relevant regional development authorities.

(4) A regional planning joint committee may co-opt such other persons as may be necessary to assist the joint committee in the performance of its functions.

(5) Each regional planning joint committee shall establish a secretariat whose members shall be the county directors of physical planning from the relevant county governments.

Functions of a regional planning joint committee

- 31.** A regional physical planning joint committee shall—
- (a) provide policy guidance on the preparation of the relevant regional physical development plan;
 - (b) ensure ownership and support of the plan preparation process by relevant public and private sector agencies;
 - (c) mobilize adequate resources for preparation of regional physical development plans;
 - (d) facilitate public outreach and support; and
 - (e) co-ordinate the plan preparation process.

Scope of a regional physical development plan

- 32.** A regional physical development plan shall—
- (a) define the scope of the plan; and
 - (b) define the geographical area to which the plan relates.

Purpose and Objects

- 33.** (1) A regional physical development plan shall be prepared by the regional physical planning joint committee and may be in reference to any—
- (a) public land;
 - (b) community land;
 - (c) private land; or
 - (d) defined metropolitan area
- within the jurisdiction of two or more county

governments.

(2) A regional physical development plan may be prepared for—

- (a) The improvement of land;
- (b) providing for the proper physical development of land;
- (c) securing suitable provision for transportation, public purposes, utilities and services;
- (d) commercial, industrial, residential and recreational areas, including parks, open spaces and reserves;
- (e) the making of suitable provision for the use of land for building;
- (f) the management of reserved public land,
- (g) sustainable livelihoods; or
- (h) other purposes.

(3) A regional physical development plan may provide for planning, re-planning, or reconstructing the whole or part of the area comprised in the plan, and for controlling the order, nature and direction of development in such area.

Contents of a regional physical development plan

34. (1) A regional physical development plan shall consist of—

- (a) a technical report on the conditions, resources and facilities in the area comprised in the plan;
- (b) the policies and proposals on the allocation of resources in the area;
- (c) the sites for the development of physical infrastructure in the area;
- (d) a description and analysis of the conditions of physical

- development in the area;
- (e) any studies or reports relating to the physical development of the area;
- (f) maps and plans showing current and anticipated land use and development in the area; and
- (g) any other relevant information.

(2) A regional physical development joint committee shall take into account the matters specified in the First Schedule in preparing a regional physical development plan in addition to the provisions of subsection (1).

Initiation of a regional physical development plan

35. (1) The Director-General may on his own initiative or as the Director-General may be directed by the Council or by a written application by the relevant county governments initiate the process of preparing a regional physical development plan by publishing a notice in the *Gazette* and in at least two newspapers with a national circulation stating the Director-General's intention to constitute a regional physical development joint committee and the broad reasons for the constitution of the joint committee.

(2) The Director-General and the joint committee shall prepare and publish the regional plan within two years.

(3) The Director-General shall hold at least three stakeholders' meeting during the preparation of a regional plan.

Notice of and objections to a regional plan

36. (1) Within thirty days of the completion of a regional plan, the Director-General shall publish a notice in the *Gazette* and

in at least two newspapers of national circulation and in the notice shall invite any interested person to inspect the regional plan at the places and times designated in the notice.

(2) An interested person who objects to any part of the regional plan may do so in writing to the Director-General within thirty days of the publication of the notice contemplated in sub-section (1) and the Director-General shall consider the objections and make a determination and inform the interested party in writing within thirty days of receiving the objection.

(3) If the interested party is aggrieved with the determination of the Director-General that interested party may appeal to the National Physical Planning Liaison Committee within fourteen days of receiving the determination of the Director-General and the Committee shall hear and determine the appeal within thirty days of the appeal being made

(4) If the interested party is further aggrieved by the determination of the National Physical Planning Liaison Committee, that interested party may make a further appeal to the Environment and Land Court within fourteen days of the determination of the Committee.

(5) The decision of the court shall be final.

Approval of a regional
plan

37. (1) Within thirty days of the publication of a regional plan or if all objections have been heard and determined, the Director-General shall publish the final regional plan and submit it to the Council for approval.

Modification and
revision of a regional
plan

(2) If the Council approves the regional plan, the Director-General shall publish the plan in the *Gazette* and in at least two newspapers of national circulation.

38. (1) The Director-General may from time to time propose for approval to the Council the modification of a regional physical development plan if—

- (a) there are practical difficulties in the execution or enforcement of the regional plan;
- (b) there has been a change of circumstances since the regional plan was published; and
- (c) there are other justifiable grounds as may be notified to the Director-general by the Cabinet Secretary or the relevant county governments.

(2) If the Council approves the Director-General's proposal to modify a regional plan, the Director-General shall publish the proposal in the *Gazette* and in at least two newspapers of national circulation and invite comments from interested parties within the period that shall be prescribed by the Director-General in the notice regarding the proposed modification of the regional plan.

(3) The Director-General shall consider any comments made regarding the modification of a regional plan within thirty days of the date notified in the *Gazette* inviting comments from interested parties and where necessary the Director-General may rely on those comments during the process of modifying a regional plan.

(4) The Director-General and the regional physical

planning joint committee shall modify the regional plan within a period of one year from the date that the Director-General publishes the notice under subsection (3) and submit the modified regional plan to the Council for approval within thirty days of completing the modification.

(5) A regional plan may only be revised after a period of ten years has elapsed after it is published in the *Gazette* under section 37.

(6) The procedure outlined in sub-sections (1), (2), (3) and (4) shall apply, with the necessary modifications, to the process of revising a regional plan.

Implementation of the regional physical development Plan

39. In addition to a national physical development plan, a regional physical development plan shall form the basis for the preparation of a county physical development plan, a city physical development plan or an urban area physical development plan for the county governments within the planning area covered by the regional plan.

Reports

40. (1) At least three months before the end of a financial year, every county director of physical planning in a county covered by a regional physical development plan shall submit a report on the implementation of the regional plan to the Director-General.

(2) The Director-General shall consider and comment on the reports of the county directors of physical planning and shall prepare a report for the consideration of the Council on the implementation of the regional physical development plan.

C—COUNTY PHYSICAL DEVELOPMENT PLAN

41. (1) Once in every ten years, a county director of physical development shall prepare a county physical development plan for that county.

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(2) Each county physical development plan shall be consistent with the current national physical development plan, any relevant regional physical development plan and the county spatial plan contemplated under section 110 of the County Governments Act, 2012.

(3) The county director shall ensure the county physical development plan is prepared and published within a period of eighteen months.

Purpose and Objects

42. The objects of a county physical development plan are to—

- (a) provide an overall physical development framework for the county;
- (b) guide rural development and settlement;
- (c) provide a basis for infrastructure and services delivery;
- (d) guide the use and management of natural resources;
- (e) enhance environmental protection and conservation;
- (f) identify the proper zones for industrial, commercial, residential and social developments;
- (g) improve transport and communication networks and linkages; and
- (h) give effect to County Spatial Plans.

43. (1) At least fourteen days before commencing the

preparation of a county physical development plan, a county director of physical planning a notice in the County *Gazette* and the notice shall include the intention to prepare a county plan, the objects of the county plan and the matters to be considered in the county plan.

(2) The notice shall be displayed for a period of fourteen days at the offices of the county director of physical planning and such other places as may be notified by the notice published under sub-section (1).

(3) The county director of physical planning shall hold at least three stakeholders meetings before the completion of the preparation of the county plan.

Contents of a county
physical development
plan

- 44.** (1) A county physical development plan shall consist of—
- (a) policies, strategies and general proposals for the development and use of county land;
 - (b) a summary of the situational analysis;
 - (c) proposals for proper physical development, resource utilization and linkages with neighbouring counties;
 - (d) diagrams, illustrations and description of current and anticipated developments in the county;
 - (e) an implementation budget;
 - (f) an implementation strategy;
 - (g) a reporting, monitoring and evaluation strategy; and
 - (h) any other matters as may be prescribed.

(2) In addition to the provisions of sub-section (1) the Director-General shall take into account those matters specified in the Second Schedule.

45. (1) Within thirty days of the publication of a county physical development plan, the county director of physical planning shall publish a notice in the *County Gazette* and in at least two newspapers with a national circulation and in the notice the county director shall invite interested parties to inspect the county physical development plan at the places and times specified in the notice.

(2) An interested person who wishes to make any comment on the county physical development plan may do so within thirty days of the publication of the notice under sub-section (1) and the county director of physical planning shall consider the comments and may or may not incorporate the comments in a revision of the county physical development plan and the county director of physical planning shall inform that interested party within fourteen days of receiving the comments from that interested party.

(3) An interested person aggrieved with the decision of the county director of physical planning under sub-section (2) may appeal against that decision to the county physical planning liaison committee and the committee shall hear and determine the appeal within thirty days of the making of the appeal.

(4) An interested person who appeals to the county physical planning liaison committee and who is aggrieved by the determination of the committee may file an appeal against the determination of the committee in the Land and Environment Court within thirty days of the determination of the committee and the decision of the Court shall be final.

Completion and approval

46. (1) If there are no objections to a county physical development plan, or if all appeals under section 45 have been heard and determined, the county director of physical planning shall publish the county physical development plan in the *County Gazette* and in at least two newspapers with a national circulation within thirty days of the county plan's completion or when the last appeal is finally heard and determined, as the case may be.

(2) The county director of physical planning shall submit the county physical development plan published in the *County Gazette* to the county government and the governor shall cause the published county plan to be placed before the county assembly for approval.

(3) If the county assembly approves the county physical development plan, the Clerk of the county assembly shall deliver the approved county physical development plan to the member of the county executive committee responsible for matters relating to physical planning who shall sign it and publish it in the *County Gazette*.

(4) A county physical development plan is the basis for the preparation of physical development plans, sectoral programmes and projects in the county and sub-county levels.

Amendment of a County
Physical Development
Plan

47. (1) A county director of physical planning may submit to the relevant county government for approval a proposal for the amendment of a county physical development plan if—

(a) there are practical difficulties in the execution or

enforcement of that county plan; or

(b) there has been a change of circumstances since the plan was approved.

(2) On the approval of the county government, the county director shall publish a Notice in the *County Gazette* and in at least two newspapers of national circulation notifying any interested party of the proposed amendments to the county plan and the period within which interested parties may make representations to the county director regarding the proposals.

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(3) A proposal for amending a county physical development plan shall—

(a) state the reasons for the proposed amendment;
and

(b) comply with the relevant provisions of the County Governments Act, 2012.

(4) Where a county director discovers that a proposed amendment to the county physical development plan shall affect another county, that county director shall consult the county director or directors as the case may be of the other county or counties as the case may be and shall take into account the comments of that other county director or those other county directors as the case may be before proceeding with the amendment of the county physical development plan.

(5) During the process of amending a county physical development plan, the county director of physical planning shall consult a city director of physical planning or a municipal

director of physical planning and incorporate their views, where necessary, in the amended county physical development plan.

(6) This section does not prevent the national government or a person ordinarily resident in a county from proposing an amendment to the county physical development plan.

Revision

48. (1) A county director of physical planning may only initiate the process of revising a county physical development plan after eight years have elapsed since the county plan was published in the *Gazette*.

(2) The provisions of section 46 apply with the necessary modifications to the revision of a county physical development plan.

D—LOCAL PHYSICAL DEVELOPMENT PLANS

Local physical development plans

49. (1) A city or a municipal director of physical planning shall prepare a local physical development plan in respect of a city, municipality, town or unclassified urban area as the case may be.

(2) A local physical development plan may be for long-term physical development, short-term physical development, urban renewal, or redevelopment and for the purposes set out in the Third Schedule in relation to each type of plan.

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(3) A local physical development plan shall be consistent with an Integrated City or Urban Development Plan as contemplated under Part V of the Urban Areas and Cities Act,

2011.

Purpose of a local physical development plan

50. (1) A city or a municipal director of physical planning, as the case may be, shall prepare a local physical development plan for—

- (i) zoning, urban renewal, or redevelopment;
- (ii) guiding and co-ordinating the development of infrastructure;
- (iii) regulating land use and land development;
- (iv) providing a framework for coordinating various sectoral agencies; and
- (v) giving effect to any Integrated City or Urban Development Plan.

Initiation and preparation

51. The preparation of a local physical development plan may be initiated by the county director of physical planning, a city director of physical planning or a municipal director of physical planning, as may be appropriate, but only with the approval of the County Executive Committee.

Contents of local physical development plan

52. (1) A local physical development plan shall consist of—

- (a) a survey report in respect of the area to which the plan relates carried out as the manner specified in the Third schedule; and
- (b) any GIS-based maps and descriptions as may be necessary to indicate the manner in which the land in the area may be used in accordance with the requirements of the Third Schedule.

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(2) The matters specified in the Second Schedule or in section 40 of the Urban Areas and Cities Act, 2011, may be included in a local physical development plan.

Notice

53. (1) Within thirty days of the preparation of a local physical development plan, a city or municipal director of physical planning shall publish a Notice in the County *Gazette* and in at least two newspapers of national circulation inviting any interested parties to inspect and comment on the plan at the place and times designated in the notice.

(2) An interested party who wishes to comment on the local physical development plan shall do within thirty days of the publication of the Notice under sub-section (1).

(3) The city or municipal director of physical planning, as the case may be, shall consider the comments of the interested parties and may or may not incorporate them in the local physical development plan and shall then notify each interested party who made comments of the decision within fourteen days of receiving the comments.

(4) If an interested party who made comments on a local physical development plan is aggrieved with the decision of the city or municipal director of physical planning, as the case may, that interested party may appeal against the decision of the city or municipal director as the case may be to the county physical planning liaison committee and the committee shall hear and determine the appeal within thirty days of the appeal being filed.

(5) If the interested party is aggrieved by the determination of the county physical planning liaison committee under subsection (4), that interested party may file a further appeal to the Environment and Land Court within fourteen days and the court shall hear and determine the appeal within thirty days and the decision of the Court shall be final.

Approval

54. (1) Where there are no objections to the local physical development plan published under section 52, or where all appeals have been heard and determined, and within thirty days of the publication of the plan or the determination of the final appeal—

- (a) in respect of an unclassified urban area, the county director shall submit the local plan to the county executive committee member for that member's endorsement and that county executive committee member shall place the local plan before the county assembly for approval; and
- (b) in respect of a city or a municipality, the city director of physical planning or the municipal director of municipal planning, as the case may be, shall submit the local plan to the city or municipal board of management, as the case may be, for the board's endorsement and the board shall thereafter submit it to the county executive committee member who shall thereafter place it before the county assembly for approval.

(2) Where the county assembly—

- (a) approves a local plan under sub-section (1), the

Clerk of that assembly shall prepare a Memorandum of Approval by the county assembly and place the approved local plan before the county executive member who shall sign the approved plan; or

- (b) does not approve the local plan under sub-section (1), the Clerk of the county assembly shall prepare a Memorandum of Refusal by the county assembly setting down the reasons for the refusal and the relevant director shall amend the local plan to address the reasons for refusal and submit it to the county executive committee member for that member's signature.

(3) Where a local plan is revised or amended, the revised or amended plan, as the case may be, shall be approved in accordance with this section.

(4) Where a local plan has been approved by the county assembly and the county executive committee member has signed the approved local plan, and within fourteen days of the county executive committee member's signature, the county director of physical planning shall publish the approved local plan in the *County Gazette* and in at least two newspapers of national circulation.

- (5) The approved local plan shall form the basis for—
 - (a) development control in the specified area;
 - and
 - (b) the siting or location of public capital projects.

Amendment or revision
of local physical
development plans

55. (1) A county director of physical planning, may amend or revise a local physical development plan if—

- (a) there are practical difficulties in the implementation of the plan; or
- (b) there has been change of circumstances since the plan was approved.

(2) Where the county director intends to amend or revise a local plan, the county director shall submit to the county executive committee member or the chairperson of the city or municipal board of management, as the case may be, a proposal for the amendment of the local plan setting out the grounds for the proposed amendment.

(3) Where the county executive committee member or chairperson of the city or municipal board of management, as the case may be, does not object to the proposed amendment or revision of the local plan, the county director shall publish a notice in the *County Gazette* and in at least two newspapers of national circulation and invite interested parties to comment on the proposed amendments to the local plan within the period specified in the notice.

(4) The county director shall take into account any comments made on the proposed amendment or revision of the local plan and shall submit the amended or revised local plan to the county executive committee member and the that member shall place the amended or revised local plan before the county assembly for approval.

(5) A county director of physical planning may initiate the revision of a local physical development plan only after a period of eight years after the local plan has been approved under section 54.

(6) A county director, in consultation with the county executive committee member and the relevant chairperson of a city or municipal board of management, may initiate the revision of a local plan only after a period of three years after the local plan has been approved under section 54.

E—SPECIAL AREA PLANS

Declaration of special
planning area

56. (1) A county government may, on its own motion or as may be requested by the national government or the Council, declare an area as a special planning area if—

- (a) that area has unique development and environmental potential or challenges;
- (b) that area has been identified as suitable for intensive and specialized development activity;
- (c) the development of that area might have significant effect beyond that area's immediate locality;
- (d) the development of that area raises significant urban design and environmental challenges;
- (e) the declaration is meant to guide the implementation of strategic national projects; or
- (f) the declaration is meant to guide the management of internationally shared resources.

(2) Where a county government has declared an area as a special planning area, the county director may, by notice in the *County Gazette*, suspend for a period of not more than two

years any development in the special planning area until a physical development plan in respect of that area has been approved by the County Assembly.

(3) Despite sub-section (2), where planning permission has been granted in an area declared a special planning area before the declaration is made, the permitted development shall be permitted to continue but only if planning permission was granted more than six months before the declaration of the special planning area.

(4) The county government shall declare an area as a special planning area by notice in the County *Gazette* and in at least two newspapers of national circulation and the notice shall specify the area declared as a special planning area and the nature of the proposed development for which the declaration has been made.

(5) A county government may publish such regulations as may be necessary to promote public participation during the process of declaring an area as a special planning area.

(6) A physical development plan prepared for a special planning area shall undergo the process of approval as provided in section 54.

Contents of a special plan

57. A special area plan shall contain—

- (a) a written statement highlighting the grounds for the declaration of a special plan area;
- (b) the challenges the special plan intends to address;
- (c) the geographical area covered by the special plan;

- (d) the infrastructure needs of the special plan area;
- (e) a detailed assessment of the social, environmental and economic conditions of the special plan area;
- (f) proposed zones in the special plan area;
- (g) proposed conditions for development in the special plan area;
- (h) a framework for the implementation, monitoring and evaluation of the special plan.

PART IV—DEVELOPMENT CONTROL

Objectives of development control

58. The objectives of development control are—

- (a) to ensure orderly physical development;
- (b) to ensure optimal land use;
- (c) to ensure the proper execution and implementation of approved physical development plans;
- (d) to protect and conserve the environment
- (e) to promote public participation in physical development decision-making.

Power to undertake development control

59. Subject to the provisions of this Act and the Urban Areas and Cities Act, 2011, each planning authority may, in the area under the planning authority's jurisdiction—

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- (a) control or prohibit the use or development of land or buildings for the proper and orderly development of the area;
- (b) control or prohibit the sub-division of land or existing parcels of property;
- (c) consider and approve all development applications;
- (d) grant development permissions to applicants;
- (e) ensure compliance with the provisions of this Act or any other relevant written law; and

- (f) protect and preserve public land reserved for open spaces, parks, urban forests and green belts.

Indemnity for
Planning Authorities and
officers.

60. The planning authorities and their officers shall not be personally liable to any action or other proceeding for or in respect of any act done or omitted to be done without negligence and in good faith in the exercise or purported exercise of any of the functions conferred by or under this Act.

Development
permission

61. (1) A person may only carry out any development in a planning area after obtaining development permission from the relevant planning authority.

(2) A person who commences any development without obtaining development permission commits an offence and is liable to a fine equivalent to not less than five per cent and not more than ten per cent of the value of the land on which the development is occurring, or to imprisonment of a term not exceeding two years or to both.

(3) The planning authority may require a person who has commenced a development without obtaining development permission to restore the land on which the development is taking place to its original condition or as near to its original condition as is possible and that such restoration shall take place within ninety days.

(4) Where a person who is required to do so fails to comply with the provisions of sub-section (3), the planning authority may undertake to restore the land as required and may recover the cost of the restoration from the person required to

undertake the restoration.

(5) The planning authority may revoke a development permission if the applicant has contravened any provision of this Act or for any justifiable cause.

(6) The planning authority may modify the conditions imposed on development permission where circumstances require it or for any justifiable cause.

Application for
development
permission

62. (1) A person shall obtain development permission from a planning authority by applying for development permission from that planning authority in the prescribed form and after paying the prescribed fees.

(2) An applicant for development permission shall provide documents, plans and particulars as may be required by the planning authority to indicate the purposes of the proposed development.

(3) An applicant for development permission shall indicate the proposed uses to which the land shall be put, the population density to which that land shall be subjected and the portion of the land the applicant shall surrender for easements as a consequence of the applicant's proposed development.

(4) Where an applicant is not the registered owner of the land for which development permission is being sought, that applicant shall obtain the written consent of the registered owner of that land and the applicant shall provide that written consent to the planning authority at the time of applying for

development permission.

(5) Where a proposed development requires compliance with the provisions of any other written law, that applicant shall comply with the provisions with that other written law before making the application for development permission to the planning authority.

(6) For the purposes of this section, development means—

- (a) making a material change in the use of any building or land;
- (b) making a material change in the density of any land; or
- (c) subdivision of land, amalgamation of land, change of use of land, or extension of use of land.

(7) For the purposes of this section, development is not, —

- (a) the carrying out of works for the maintenance, improvement, other alteration or addition to any building where such maintenance, improvement, alteration or addition does not exceed ten per cent of the floor area of the building;
- (b) the carrying out by any public institution any works for the construction, maintenance or improvement of a road if the works are carried out on a road reserve; or
- (c) the carrying out by any public institution any works for the inspection, repair or renewal of any sewer, mains, pipes, or cables:

Provided that within seven days of the completion of the works, the person or public institution that carried out the works restores the site to a state that is not injurious to the site's users or the environment.

(8) Where there is doubt that development permission is required, the applicant shall apply to the county physical planning committee for a determination whether the proposed project requires planning permission and the county physical planning committee shall determine the question within thirty days.

Plans and documents to be prepared by qualified person

63. (1) A person applying for development permission shall ensure that any documents, plans and particulars that are provided to the planning authority while applying for development permission have been prepared by qualified, registered and validly registered professions.

(2) A person who purports to prepare a document, plan or particulars required under this Act shall prove that person's credentials when asked to do so by the planning authority and shall be required to authenticate the copies of the documents, plans or particulars provided to the planning authority in that person's name.

Development applications referred to relevant authorities

64. (1) Within seven days of receiving an application for development permission, a planning authority shall give a copy of the application to the relevant authorities or agencies to review and comment on the application and the relevant authorities or agencies shall comment on all relevant matters including—

- (a) land survey;
- (b) roads and transport;
- (c) agriculture and livestock;
- (d) health;
- (e) public works & utilities;

- (f) environment and natural resources; and
- (g) any other relevant authority.

(2) Within fourteen days of receiving the copy of the development permission from the planning authority, the relevant authorities or agencies shall submit their comments to the development authority.

(3) Where a relevant authority or agency fails to submit its comments to the planning authority as required under subsection (2), the development authority may make a decision on the application for development permission without taking into account the views of the relevant authority or agency.

Decision making and communication

65. (1) When considering an application for development permission, a planning authority—

- (a) is bound by the relevant approved physical development plan;
- (b) shall take into consideration the provision of health facilities and other social amenities in the area where development permission is being sought;
- (c) shall take into consideration the comments made on the application for development permission by other relevant authorities in the area where development permission is being sought; and
- (d) in the case of a leasehold property, shall take into consideration any special conditions stipulated in the lease.

(2) Where an applicant for development permission

proposes to subdivide a property, extend the use of a property, extend a lease on a property, or change the use of a property, the planning authority shall place the application before the relevant county land management board for review and advice.

(3) With regards to an application placed before a county land management board under sub-section (2), that board may recommend to the planning authority that the authority accept or reject the subdivision of the property, extension of lease, the extension of use or the change of use and the recommendation shall be made within fourteen days.

(4) With regards to an application for development permission that complies with the provisions of this Act and within thirty days of receiving an application for development permission, the planning authority may—

- (a) grant the applicant the development permission in the prescribed form and may stipulate any conditions it considers necessary when granting the development permission;
- (b) refuse to grant the applicant the development permission in the prescribed form and state the grounds for the refusal in writing; or
- (c) defer the decision to grant or refuse the development permission for a period and for specified reasons in the prescribed form.

(5) An applicant or an interested party that is aggrieved by the decision of the planning authority regarding an application for development permission may appeal against that decision to the county physical planning liaison committee within thirty

days of the decision by the authority and that committee shall hear and determine the appeal within fourteen days of the appeal being filed.

(6) An applicant or an interested party who files an appeal under sub-section (5) and who is aggrieved by the decision of the committee may appeal against the decision of the committee to the Environment and Land Court within seven days of the decision and the court shall hear and determine the appeal within thirty days of the appeal being filed and the decision of the court shall be final.

Environmental and
Social Impact
Assessment

66. (1) Despite the provisions of section 64, a planning authority may require an applicant for development permission to conduct an environmental impact assessment in accordance with the provisions of the Environmental Management and Co-ordination Act, 1999, and obtain an Environmental Impact Assessment License, in respect of activities connected with—

- (a) proposals for industrial locations;
- (b) dumping sites;
- (c) sewerage treatment;
- (d) quarries; or
- (e) any other development activity that may have injurious impact on the environment.

No. 9 of 1999

(2) Despite an applicant being issued with an Environmental Impact Assessment license in accordance with the Environmental Management and Co-ordination Act, 1999, a planning authority may, in writing, defer the decision to grant development permission or may refuse to grant the applicant development permission.

Registers

67. (1) A planning authority shall maintain a register of documents submitted by applicants for development permission and shall issue certificates of registration to every applicant who submits such documents in connection with the documents.

(2) In addition to any other provisions of this Act, the planning authority shall only grant development permission where the applicant has been issued with a certificate of registration under sub-section (1).

(3) A planning authority shall maintain a register of development permission and shall enter the details of each applicant for development permission, whether or not development permission was granted to that applicant and the details of the proposed project for which development permission has been applied for.

(4) A register maintained by the planning authority under this Act shall be open to the public for scrutiny and the planning authority shall publish guidelines for public access to that register.

Development fees

68. (1) A planning authority may levy a development fee against an applicant for development permission if the application is for—

- (a) a change of use;
- (b) increase of density through subdivision;
- (c) increase in plot ratio; or
- (d) where the proposed project is likely to result in an

increase in the demand for public infrastructure facilities or services.

(2) Each county government, in consultation with the relevant planning authority, may, by notice in the County *Gazette*, publish regulations determining the circumstances under which a development fee shall be levied, the rates that shall be payable and the circumstances under which a development fee may be waived.

(3) The sums received by a planning authority on account of development fees shall be paid into a fund established by the county government for that purpose and shall be applied towards the development of county infrastructure and the provision of municipal services in the county.

(4) Where a development fee has been waived in relation to an application for development permission, the planning authority may require that applicant to develop infrastructure in relation to the property in question for general use by the residents of the area where the property in question is located.

Lapse of development permission

69. (1) Where an applicant for development permission has been granted development permission but has not commenced the proposed project within one year of receiving the development permission, that permission shall lapse.

(2) Despite sub-section (1), the planning authority, where an applicant makes an application, may extend development permission by a period of one year if the planning authority determines it is necessary or just to grant that extension.

(3) Where the planning authority extends development permission, it may impose conditions on the applicant that it considers fit.

Commencement and completion of building works

70. (1) Where an applicant is granted development permission for building works, that applicant shall complete those building works within five years after receiving the development permission.

(2) The planning authority may impose conditions or impose a fine to be prescribed in regulations on an applicant for development permission for building works where that applicant fails to complete the building works within five years,

Prohibition of grant of license for development of a commercial or industrial nature

71. (1) A licensing authority shall not grant a license for the commercial or industrial use or occupation of any building, or in respect of any premises or land, for which development permission has not been granted by the relevant planning authority.

(2) For the purposes of this section—

(a) commercial use includes shops, offices, hotels, restaurants, bars, kiosks and similar business enterprises but does not include petroleum filling stations;

(b) industrial use includes manufacturing, processing, distilling brewing, warehousing and storage, workshops and garages, mining and quarrying, power generation and similar industrial activities

including petroleum filling stations; and

(c) emerging technologies includes telecommunication installations, information and communications technology parks and aviation services.

Offences relating to development permission

72. (1) A person commits an offence if that person—

- (a) uses or permits to be used any land or building in contravention of any conditions imposed by a planning authority when granting development permission; or
- (b) commences, undertakes or carries out—
 - (i) a development where development permission has been revoked;
 - (ii) where development permission has not been granted;
 - (iii) a development where development permission has been modified and the development does not comply with the modifications in the permission; or
 - (iv) a development where the building works are inconsistent with the plans approved by the planning authority.

(2) A person who commits an offence under this section is liable to—

- (a) a fine not less than five percent and not exceeding ten percent the value of land on which the development is taking place or to

imprisonment for a term not exceeding two years or to both; and

(b) in the case of a continuing offence, to a fine not exceeding five thousand shillings for each day during which the offence continues after the first conviction.

Access to information

73. (1) A planning authority may demand the production of, and make extracts from, all registers or other records or any deeds or instruments belonging to, or in the custody or possession of, any public officer or any person and in which are contained particulars of any land or property affected by the relevant physical development plan.

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(2) The information obtained by a planning authority in accordance with sub-section (1) shall be treated confidentially and shall not be disclosed to any other person except by an order of a court in connection with any legal proceedings, and, where relevant, the provisions of the Official Secrets Act shall also apply.

Strategic national or regional projects.

74. (1) The National Physical Planning Council shall consider and offer policy guidance to any public institution proposing a project of strategic national or regional importance.

(2) The projects contemplated in sub-section (1) shall be enumerated in the Fifth Schedule.

Preservation of Heritage sites
No. 6 of 2006

75. (1) Subject to the provisions of National Museums and Heritage Act the county government may, after consultation with the Cabinet Secretary responsible for national heritage

serve on the owner or occupier of a building which in the opinion of the county government is of special architectural value or historic interest, an order prohibiting the demolition, alteration or extension of such building.

(2) All physical development plans shall take into account and record all heritage sites declared or deemed to have been declared under the National Museums and Heritage Act.

PART V—ENFORCEMENT

Enforcement notice

76. (1) A planning authority shall serve the owner, occupier, agent or developer of property or land with an enforcement notice if it comes to the notice of that planning authority that—

- (a) the development of land has been or is being carried out after the commencement of this Act without the required development permission having been obtained; or
- (b) any condition of a development permission granted under this Act has not been complied with.

(2) An enforcement notice shall—

- (a) specify the development alleged to have been carried out without development permission or the conditions of the development permission alleged to have been contravened;
- (b) specify measures the developer shall take, the date on which the notice shall take effect, the period within which the measures shall be complied; and
- (c) require within a specified period the demolition or

alteration of any building or works or the discontinuance of any use of land or the construction of any building or the carrying out of any other activities .

(3) Where a person on whom an enforcement notice has been served is aggrieved by that notice, that person may appeal to the relevant physical planning liaison committee within seven days of being served with the notice and the committee shall hear and determine the appeal within thirty days of the appeal being filed.

(4) An interested party that is aggrieved with the determination of the physical planning liaison committee may appeal to the Environment and Land Court within fourteen days of the decision of the committee only on a matter of law and the court shall hear and determine the appeal and the decision of the court shall be final.

(5) A person who has been served with an enforcement notice and who refuses to comply with the provisions of that notice commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

Requirement to present development application

77. (1) A planning authority shall require an owner, occupier, agent or developer of property or land to present a development application for consideration the consideration of the planning authority if, after the commencement of this Act—

(a) it comes to the notice of the planning authority

that a development has commenced or has been completed where that development commenced or was completed before the commencement of this Act; and

(b) in the assessment of the planning authority that development would meet the requirements of this Act.

(2) A notice under this section shall—

(a) state the period within which the owner, occupier, agent or developer shall comply with the notice; and

(b) inform that owner, occupier, agent or developer that development permission may not be granted.

(3) The planning authority shall serve on the owner, occupier, agent or developer who is required to apply for development permission with an enforcement notice as contemplated in section 75 if the planning authority refuses to grant that owner, occupier, agent or developer a development permission or—

(a) fails to make an application despite being afforded a chance to make such an application; or

(b) fails to make the application within the prescribed time.

Requisition notice

78. (1) Where a planning authority is satisfied that any use of land or building works is not in public interest, it shall serve a requisition notice on the owner, occupier, agent or developer of the land or building works, as the case may be, and the notice may require that the owner, occupier, agent or developer to—

(a) discontinue that use of land;

- (b) comply with conditions to be specified in the notice regarding the use of that land; or
- (c) require the alteration or demolition of the building works.

(2) If the owner, occupier, agent or developer of the land or building works, as the case may be, is aggrieved with the decision of the planning authority, that owner, occupier, agent or developer may appeal against the decision to the Environment and Land Court within thirty days of the requisition notice being served and the court shall hear and determine the appeal within thirty days of the appeal being filed.

(3) The decision of the Environment and Land Court is final.

PART VI—PHYSICAL PLANNING LIAISON COMMITTEES

Establishment of Physical Planning Liaison Committees

79. There is established the National Physical Planning Liaison Committee and physical planning liaison committees for each county government and city or municipal boards of management where established.

Composition of National Physical Planning Liaison Committee

80. (1) The National Physical Planning Liaison Committee consists of—

- (a) the chairperson of the National Land Commission or a designated representative who shall be its chairperson;
- (b) the Director-General of the National Environment Management Authority or a designated representative;

- (c) the Director-General of the Water Resources Management Authority or a designated representative;
- (d) the Director-General of the Kenya National Highways Authority or a designated representative;
- (e) the Chairperson of the National Construction Authority or a designated representative;
- (f) the Chief of Defence Forces or a designated representative;
- (g) a representative of an alliance representing associations in the private sector in Kenya appointed by the Cabinet Secretary;
- (h) a representative of an association of architects in Kenya appointed by the Cabinet Secretary;
- (i) a representative of an institute representing physical planners in Kenya appointed by the Cabinet Secretary; and
- (j) a representative of the Law Society of Kenya appointed by the Cabinet Secretary;

(2) The Director-General shall be the secretary to the National Physical Planning Committee.

(3) The members of the National Physical Planning Liaison Committee appointed under sub-section (1)(f), (g), (h), (i), and (j) shall serve for a term not exceeding five years and shall not be eligible for re-appointment.

(4) The National Physical Planning Liaison Committee may co-opt any other persons with special skills, interest and knowledge to assist in its deliberations but not more than three

persons at any one time.

(5) The co-opted members of the National Physical Planning Liaison Committee may not vote on any matter for which a vote of the committee is required and the numbers of the co-opted members shall not count in determining the quorum of the National Physical Planning Liaison Committee.

Functions of the National Physical Planning Liaison Committee

81. (1) The National Physical Planning Liaison Committee shall—

- (a) advise the Cabinet Secretary on broad physical planning policies, strategies and standards; and
- (b) hear and determine appeals under this Act or as may be provided for under any other written law.

(2) The National Physical Planning Liaison Committee may hear appeals against decisions made by the National Physical Planning Committee including on—

- (a) the development of major infrastructure facilities;
- (b) the reserving of public land for public projects;
- (c) the implementation of national or regional physical development plans; or
- (d) the environmental impacts on ecologically sensitive areas by the implementation of strategic projects.

County physical planning liaison committees

82. (1) A county physical planning liaison committee consists of the following members who shall be appointed by the Governor—

- (a) the County Chief Officer in charge of Physical Planning who shall be the chairman;
- (b) the County Director of Physical Planning who shall be the secretary to the committee;

- (c) the chairperson of the County Land Management Board or a designated representative;
- (d) a person representing the National Construction Authority;
- (e) a planner in good standing nominated by the Physical Planner's Registration Board;
- (f) a surveyor in good standing nominated by an institute representing surveyors in Kenya;
- (g) an architect in good standing nominated by an association of architects in Kenya;
- (h) a registered environmental lead expert nominated by the National Environment Management Authority;
- and
- (i) a person representing an alliance of registered neighbourhood associations in the county;

(2) The secretariat of a county physical planning liaison committee shall be provided by the office of the relevant county director of physical planning.

(3) The members of the county physical planning liaison committee appointed under sub-section (1)(e), (f), (g), (h), and (i) shall serve for a term not exceeding five years and shall not be eligible for re-appointment.

(4) A county physical planning liaison committee may co-opt other persons with special skills, interest and knowledge to assist in its deliberations but not more than three persons at any given time.

(5) The co-opted members of a county physical planning

committee may not vote on any matter for which a vote of the committee is required and the numbers of the co-opted members shall not count in determining the quorum of a county physical planning liaison committee.

Functions of county physical planning liaison committee

- 83.** A county physical planning liaison committee shall—
- (a) enquire into and determine complaints made against planning authorities in the county in the exercise of the planning authorities' functions;
 - (b) enquire into and determine conflicts in respect of applications for development permission;
 - (c) hear and determine whether or not a proposed project is a development under this Act; and
 - (d) hear and determine appeals under this Act or any other written law.

Procedure of liaison Committees

84. (1) The National Physical Planning Liaison Committee and each other physical planning liaison committee shall, subject to this Act or any other written law, determine its own procedure.

(2) Despite sub-section (1), the quorum of the National Physical Planning Committee and each physical planning liaison committee shall be half the members of the National Physical Planning Liaison Committee or each physical planning liaison committee, as the case may be.

(3) Every decision of a physical planning liaison committee shall be by a majority vote of the members present and voting and where there is a tied vote, the chairperson of that committee or the person acting as the chairperson of that committee shall cast a deciding vote.

(4) Where the chairperson of a physical planning liaison committee is unable to exercise his functions owing to illness, genuine absence or any other reason, the members present shall elect one of their own to be the chairperson of that committee.

(5) A physical planning liaison committee shall meet at least four times in a year.

Appeal to a physical planning liaison committee.

85. (1) A person who appeals to a physical planning liaison committee shall do so in writing.

(2) A physical planning liaison committee shall hear and determine an appeal within thirty days of the appeal being filed and shall inform the appellant of the decision within fourteen days of making the determination.

(3) The chairperson of a physical planning liaison committee shall cause the determination of the committee to be filed in the Environment and Land Court and the court shall record the determination of the committee as a judgment of the court.

Indemnity of the members of Liaison Committees

86. No member of a Liaison Committee shall be liable to an action; suit or proceedings for or in respect of any Act done or omitted to be done in good faith in the exercise or purported exercise of the functions conferred under this Act.

Duty to appear before a physical planning liaison committee

87. (1) A person who has been summoned to appear before a

physical planning liaison committee or may do so through a representative or through any form of communication that the committee may permit for the purpose and if required to produce or deliver any document that person shall produce or deliver that document in accordance with the direction of the Committee.

(2) A person who contravenes the provisions of this section commits an offence and is liable, on conviction, to a fine not exceeding twenty-five thousand shillings.

Communication

88. All summons issued or notices issued, or awards or orders made, under this Act by a physical planning liaison committee may be issued or made be in electronic form or written form.

Withdrawal of appeal and abandonment of appeal

89. (1) A person who has made an appeal before a physical planning liaison committee may withdraw the appeal in writing at any time before the appeal is determined by the committee.

(2) The physical planning liaison committee shall notify each relevant party that an appeal has been withdrawn within seven days of receiving the written notice of the withdrawal.

(3) Where a physical planning liaison committee determines that an appeal has been abandoned by the person who filed the appeal, that committee may require the applicant to submit to the committee, within fourteen days of the committee notifying the applicant in writing, reasons why the appeal should not be regarded as having been withdrawn.

(4) The physical liaison committee shall consider the

submissions made under sub-section (3) and shall either allow the appeal to be finally heard and determined or shall stop all proceedings and determine that the appeal has been withdrawn.

(5) Every physical liaison committee shall maintain written records of all its proceedings.

Declaration of personal interest

90. (1) A member of a physical planning liaison committee who has an interest in a matter being considered by that committee shall disclose that interest at the meeting in which that matter is being considered.

(2) A member of a physical planning liaison committee who makes a disclosure under sub-section (1) shall not take part in any proceedings related to that matter.

(3) A member of a physical planning liaison committee who does not disclose an interest as required under this section commits an offence and on conviction is liable to pay a fine not exceeding one hundred thousand shillings.

Disclosure of Information

91. (1) A person shall not disclose, without the consent of a physical planning liaison committee—

- (a) any information obtained while serving on that physical planning liaison committee; or
- (b) any information obtained from that physical planning liaison committee in the performance of its functions.

(2) A person who contravenes the provisions of sub-section (1) commits an offence and on conviction is liable to a fine not exceeding one hundred thousand shillings.

(3) Despite sub-section (1), a person may disclose information that person obtained while serving on a physical planning committee or obtained by that committee in the performance of its duties to a person authorised by any written law to be given that information or as may be required by a court of law.

Registers

92. (1) Each physical planning liaison committee shall maintain a register of each appeal filed, minutes of the meeting of the committee and the decisions of the committee.

(2) Each register maintained by a physical planning liaison committee shall be made available to the public for scrutiny.

(3) An interested party may, in the prescribed form, apply to a physical planning liaison committee to examine a register maintained by a physical planning liaison committee and that party may, after paying a prescribed fee where prescribed, may make copies or take extracts from that register.

(4) The Commission may, by notice in the *Gazette*, make regulations for the better implementation of the provisions of this section.

Remuneration

93. The remuneration of the members of a physical planning liaison committee shall be determined by the Salaries and Remuneration Commission.

Reports

94. (1) At least three months before the end of the financial year, the National Physical Planning Liaison Committee, and

each other physical planning liaison committee, shall prepare a report of its activities for the year and submit the report to the President or the relevant governor as the case may be.

(2) The President and the relevant governor shall cause the report prepared under sub-section (1) to be placed before Parliament or the relevant county assembly as the case may be at least one month before the end of the financial year.

Regulations

95. (1) The Commission may, by notice in the *Gazette*, make regulations generally for the better carrying into effect of the provisions of this Act.

(2) Despite sub-section (1) regulations may also provide for—

- (a) forms prescribed under this Act; and
- (b) fees to be charged under this Act.

PART VII—MISCELLANEOUS PROVISIONS

Repeal of No. 6 of 1996

96. The Physical Planning Act, 1996, is hereby repealed.

Transitional provisions

97. (1) Any approval for development granted in accordance with the provisions of any written law in force immediately prior to the commencement of this Act, is deemed to be a development permission granted under this Act.

(2) Despite the provisions of sub-section (1), if a development for which approval was granted under the provisions of any written law in force immediately before the commencement of this Act has not been commenced within twenty-four months of the commencement of this Act, that

development approval shall lapse.

(3) Where an application for development had been made under the provisions of any written law prior to the commencement of this Act and approval has not been granted, that application shall be deemed to be an application for development permission under this Act and shall be deemed to have been made on the date of the commencement of this Act.

98. All regulations made under the repealed Act and in force immediately prior commencement of the Act shall continue to be in force but may be amended or revoked by regulations made under this Act

99. All disputes relating to physical planning shall, before establishment of physical planning liaison committees, shall be heard and determined by the Environment and Land Court.